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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 115.

THE CITY OF LAMPASAS, PLAINTIFF IN ERROR,

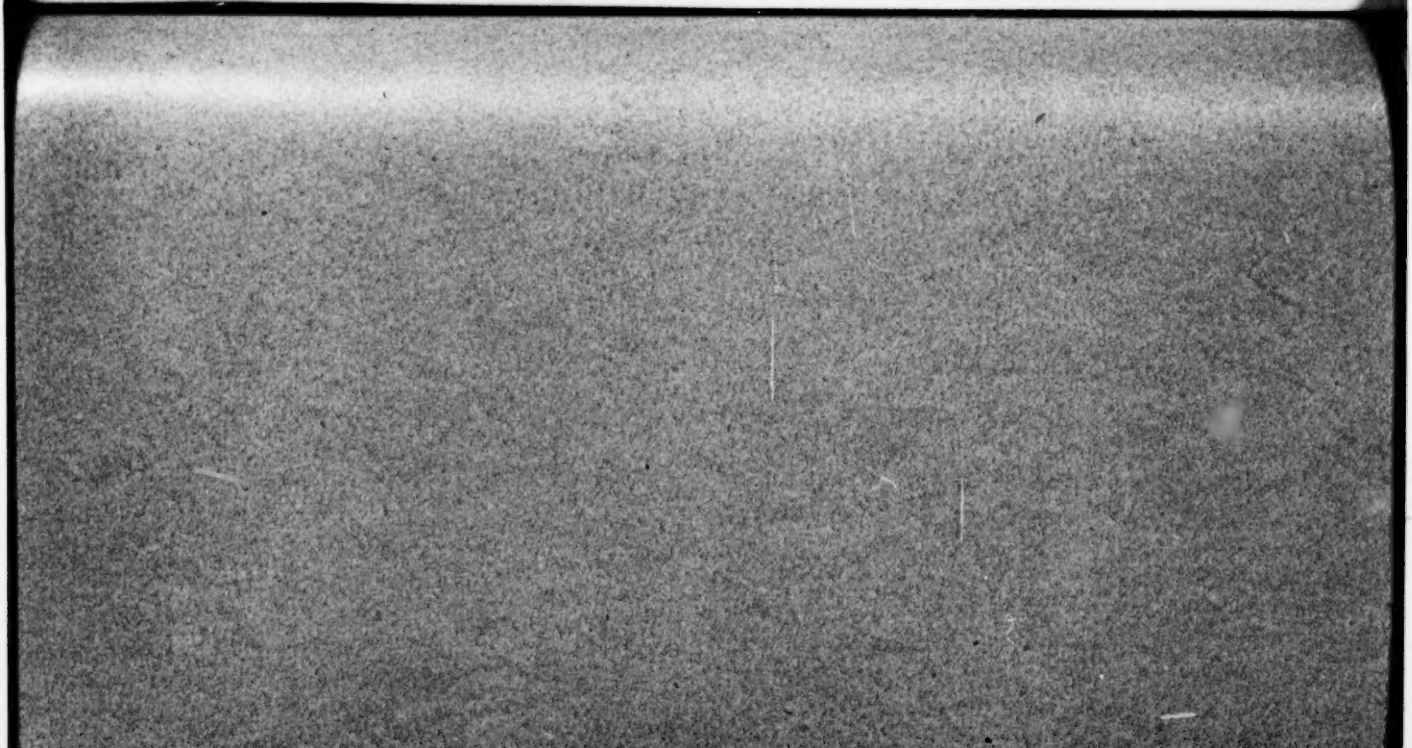
vs.

JAMES M. BELL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED AUGUST 10, 1899.

(17,485.)



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1 *Caption.*

Be it remembered that there was opened and begun to be holden at Austin, Texas, a regular term of the United States circuit court for the western district of Texas, fifth circuit, on the 3rd day of July, A. D. 1899, it being the first Monday in said month and the day fixed by law for commencing a regular term of said court at said place—present, the Honorable Thos. S. Maxey, United States district judge; Honorable Henry Terrell, United States attorney for said district; George L. Siebrecht, United States marshal for said district, and D. H. Hart, clerk of said court—when and where the following, among other, proceedings were had, to wit:

JAMES M. BELL
vs.
CITY OF LAMPASAS. } No. 2296.

Plaintiff's First Amended Original Petition.

Filed July 11, 1899.

In the Circuit Court of the United States, Western District of Texas, Austin Division, July Term, 1899.

JAMES M. BELL
vs.
THE CITY OF LAMPASAS. } No. 2296.

In the above-entitled cause, by leave of the court duly obtained, now comes the plaintiff and files the following amended original petition in lieu of his original petition herein filed June 21, 1897:

To the honorable circuit court aforesaid:

2 Your petitioner, James M. Bell, complaining of the City of Lampasas, represents:

1. That plaintiff is a citizen of the State of Pennsylvania and resides in the city of Pittsburg, in Allegheny county, in said State.

2. That defendant is a municipal corporation duly chartered under the laws of the State of Texas, and is a citizen of said State of Texas and has its domicile in the city of Lampasas, in said State and within the western district thereof, and of which J. W. Townsend is the duly qualified and acting mayor and E. S. Noble is the duly qualified and acting treasurer, and J. F. White is the duly qualified and acting secretary, each of whom reside in said Lampasas county, Texas.

3. For cause of action against defendant, plaintiff alleges that heretofore, to wit, on the 6th day of January, 1885, and on the 21st day of March, 1885, and on the 27th day of March, 1885, the defendant, as a municipal corporation aforesaid, was authorized by its charter, amongst other things, to construct water works in said city and to issue bonds for the purpose of making such improvements.

4. That under and by virtue of the powers conferred upon defendant by its charter and by the laws of the State of Texas, as aforesaid, defendant, on January 6th, 1885, by ordinance duly passed by its city council and approved by its mayor, entitled "An ordinance to provide for the issuance of water-works bonds for the city of Lampasas and to provide for the payment of interest and sinking fund for said bonds," did ordain that the mayor of said city should have engraved or printed coupon bonds of the city of Lampasas, with semi-annual interest coupons attached, falling due on the first days of January and July of each and every year from and after their date, at the rate of seven per cent. per annum interest, said bonds to be styled "Lampasas City water-works bonds," and providing that said bonds should be drawn to mature at fifty
3 years from date of issuance, with the option reserved to the city council to redeem and retire certain parts of said bonds at certain periods before ultimate maturity; and further providing that said bonds should be issued to the amount of forty thousand dollars, or so much thereof as might be necessary, to be dated at the time of issuance and bear interest from said date; further providing that said bonds should at the time of their issuance be dated and signed by the mayor and countersigned by the city secretary and registered by the city treasurer; further providing that said bonds should be issued in the sum of one thousand dollars each, payable to bearer, and the principal and interest thereon should be made payable at S. M. Swenson & Son's bank, in New York city, or at the office of the said treasurer, in the city of Lampasas, the interest being payable semi-annually, as represented by the coupons attached, said ordinance further providing as follows: "Section 7. For the purpose of providing for the payment of the interest on said bonds, and to provide a sinking fund for the redemption of the same, a special ad valorem tax of twenty-five cents on every hundred dollars' worth of property is hereby levied and ordered to be assessed and collected for the year 1885 and for each and every year thereafter, until said bonds, principal and interest, are paid, on all property subject to taxation, within the city of Lampasas, and rendered and assessed by the city assessor and collector; provided, however, that the city council shall from time to time make a proportionate reduction in the amount or rate of the taxes hereby levied, whenever the whole amount of said tax shall not be necessary to meet the interest and sinking fund on the bonds of this issue then outstanding." Said ordinance further providing that said bonds should be sold and the proceeds thereof devoted exclusively to the construction of a suitable system of water works for fire protection, family supply, and for public and private purposes and for the purchase of such fire-department supplies as may be deemed necessary by the council, said system of water works to be operated in such manner as might be thereafter provided by ordinance, resolution, or otherwise.

4 5. That in pursuance of said ordinance and by virtue of the chartered powers of defendant, as aforesaid, and for the purpose of providing funds to construct a system of water works

for said city, the defendant, acting by and through W. J. Standifer, its duly qualified and acting mayor, and S. S. Potts, its duly qualified and acting secretary, and W. S. Morris, its duly qualified and acting treasurer, did on the 27th day of March, A. D. 1885, duly execute, in accordance with the requirements of said ordinance, its forty interest-bearing coupon bonds, numbered from one to forty, inclusive, and each bond being in words and figures substantially as follows, to wit:

"UNITED STATES OF AMERICA, *State of Texas.*

"Number —. Dollars, $1,000.

"*Lampasas City Water-works Bond.*

"The City of Lampasas will pay one thousand dollars to bearer, fifty years after date hereof, with interest from date at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July in each year payable at the office of S. M. Swenson & Son, in the city of New York, or at the treasurer's office in the city of Lampasas, on presentation of the proper coupon hereto attached.

"Issued under authority of an ordinance entitled 'An ordinance to provide for the issuance of water-works bonds of the city of Lampasas, and to provide for the payment of the interest and sinking fund of said bonds,' passed January 6th, 1885, a copy of which ordinance is printed on the reverse side hereof, to which reference is made.

"Witness the hand of the mayor of the city of Lampasas, attested by the city secretary, with the corporate seal affixed, in the city of Lampasas, State of Texas, this twenty-seventh day of March, A. D. 1885.

[L. S.] W. J. STANDIFER, *Mayor.*
S. S. POTTS, *Secretary.*

5 —— ——,
Comptroller State of Texas.
S. S. POTTS,
Secretary City of Lampasas.
W. S. MORRIS,
Treasurer City of Lampasas."

That the said bonds were registered by W. S. Morris, as the treasurer of the city of Lampasas, by his signature thereon, as above appearing, and said bonds were duly registered by the comptroller of the State of Texas, and a certificate to that effect signed by him was indorsed thereon.

6. That attached to each of said bonds and representing the semi-annual interest to accrue thereon on the first day of July and on the first day of January of each year during the fifty years that said bonds were to run there was executed as part and parcel of said bonds a coupon for each separate semi-annual installment of interest, substantially as follows:

$35. The City of Lampasas $35.

Will pay bearer thirty-five dollars, at the office of S. M. Swenson & Son, in the city of New York, or at the treasurer's office, in the city of Lampasas, on the first day of ——, being six months' interest due on bond No. —.

(Signed) S. S. POTTS, *Secretary.*"

And plaintiff alleges that the blank in each of said coupons was filled with the proper date and number of the bond to which it was attached, to truly and correctly represent the obligation to pay semi-annual interest, as aforesaid.

7. That after said bonds and coupons were executed by said W. J. Standifer, as mayor; S. S. Potts, as secretary, and W. S. Morris, as treasurer, and were made payable to bearer, as aforesaid, and were duly registered by the comptroller of the State of Texas, as aforesaid, the said bonds were by defendant placed upon the market and sold in due course of trade, and defendant received in money for the purpose of providing a system of water works for public and private use and as affording a means of protection against fire, as by its said ordinance provided, the said sum of forty thousand
6 dollars, represented by its said forty bonds, each for the sum of one thousand dollars, as aforesaid, and defendant thereby became obligated and bound to pay to the bearer of each of said bonds and of each of said coupons the several sums of money specified in said bonds and in said coupons, as aforesaid.

8. That plaintiff in due course of trade and for a valuable consideration purchased and became and now is the owner of coupons Nos. 9 to 21, inclusive, and 24, 25, and 26 and 27, upon bonds Nos. 8 to 13, inclusive, issued by defendant, as aforesaid, which said coupons Nos. 9 represents the interest due on each of said bonds on January 1st, 1890, and each successive coupon up to No. 21, inclusive, represents the six months' interest due on each succeeding six months and became payable on the 1st day of July or January respectiveiy up to and including the 1st day of January, 1896, and that said coupon No. 24 represents the interest due on each of said bonds on July 1, 1897, and coupons Nos. 25 and 26 represent the interest due upon each of said bonds on January 1 and July 1, 1898, respectively, and coupon No. 27 represents the interest due upon each of said bonds on January 1, 1899. Wherefore plaintiff says that in due course of trade and for a valuable consideration he purchased and became and now is the owner of 102 of said interest coupons so attached to defendant's said bonds, as aforesaid, each of which was and is an obligation on the part of defendant as a corporation to pay to bearer the sum of $35.00, making in the aggregate for said one hundred and two coupons an obligation on the part of defendant to pay to bearer the sum of $3,570.00, with interest upon each of said coupons from the date of its maturity respectively at the rate of six per cent. per annum.

9. That, notwithstanding said coupons are long past due, the defendant repudiates its obligation to pay the same and refuses to

pay the same, to plaintiff's damage in the sum of four thousand dollars.

Premises considered, plaintiff prays that defendant be duly cited to answer this petition in terms of the law by citation issued
7 to its said officers, and upon trial for judgment for his said debt against defendant, and for interest and costs of suit, and for general relief; and he will ever pray, etc.

WEST & COCHRAN,
Attorneys for Plaintiff.

Endorsement: No. 2296. James M. Bell *vs.* City of Lampasas. 1st amended original petition. Filed July 11, 1899. D. H. Hart, clerk.

Defendant's First Amended Answer.

Filed July 11, 1899.

In United States Circuit Court for Western District of Texas, July Term, 1899.

JAMES M. BELL *vs.* CITY OF LAMPASAS. } No. 2296.

Comes now the defendant, and, by leave of the court for that purpose first had and obtained, files this its first amended answer in lieu of its original answer filed July 6th, 1897, and says:

Now comes the defendant, and, excepting to plaintiff's 1st amended original petition herein, says the same is insufficient in law, and shows no cause of action against this defendant, and of this it prays the judgment of the court.

FISET & MILLER AND
MATTHEWS & BROWNING,
Attorneys for Defendant.

And for special exceptions to plaintiff's said petition the defendant says:

1st. That plaintiff's cause of action, if any he has or had, on the coupons mentioned in his petition, which became due on January 1st and July 1st, 1890, 1891, 1892, and January 1st, 1893, accrued more than four years before the institution of this suit, all of which appears from said petition; and if said petition shows any cause of action against defendant, it only shows a cause of
8 action for the coupons therein alleged to have become due on July 1st, 1893, January 1st and July 1st, 1894 and 1895, and January 1st, 1896, the amount due thereon, as shown from plaintiff's petition, being only twelve hundred and sixty dollars. Wherefore defendant says that if plaintiff is entitled to recover anything of it that his recovery, as appears from his petition, is barred by the statutes of limitation of the State of Texas as to all of the sums so sued for except said sum of twelve hundred and sixty dollars, and this court has no jurisdiction to hear this cause of action for that sum.

2nd. Said petition does not show whether defendant was incorporated by special act of the legislature of the State of Texas or under the general laws of said State, nor does it set forth the provisions of defendant's charter, and it cannot be determined therefrom whether the defendant had power to issue the bonds therein described.

3rd. It appears from the allegations of said petition that the bonds therein mentioned were issued in pursuance of an ordinance alleged by plaintiff to have been passed by defendant's city council, entitled "An ordinance to provide for the issuance of water-works bonds for the city of Lampasas, and to provide for the payment of interest and sinking fund for said bonds;" but it does not appear that said city council was by its charter authorized to pass such ordinance or provide for the issuance of said bonds, or that the defendant was of that class of municipal corporations authorized to issue such bonds, or to levy the special tax provided by sec. 7 of said ordinance, as said ordinance is set forth in said petition.

4th. It does not appear from said petition how the authority to issue bonds was conferred on defendant, whether it acquired the same by special charter or whether it acquired the same by reason of the provisions of the general laws of the State of Texas.

5th. The petition does not show that all the prerequisites necessary to authorize the issuance of the bonds were complied with by defendant or its officers.

9 6th. It appears from so much of the ordinance, by virtue of which said bonds were issued, as is recited in said petition, that it was required that the bonds be registered by the city treasurer of defendant at the time of their issuance, and it is not alleged that the same were so registered.

7th. It does not appear from said petition that said bonds were registered by the comptroller of public accounts of the State of Texas, or that said comptroller endorsed on said bonds his certificate of registration, authenticated by his official seal, as provided for by the statutes of said State.

8th. It appears from the allegations of said petition that defendant was a municipal corporation "duly chartered under the laws of the State of Texas," and it does not appear therefrom that defendant had an existence as a municipal corporation prior to the year 1885, which said allegations amount to an allegation that the defendant is a municipal corporation chartered and created under the general laws of the State of Texas, and defendant says all charters of and attempts to create municipal corporations under the general laws of the said State are null and void, the legislature of said State in the enactment of said general laws having attempted to delegate to the voters the right to form municipal corporations and fix the boundaries thereof.

And of each and all of said exceptions the defendant prays the judgment of the court.

FISET & MILLER AND
MATTHEWS & BROWNING,
Attorneys for Defendant.

And the defendant, further answering, if its exceptions are overruled, denies all and singular the allegations in plaintiff's petition contained; and of this it puts itself upon the country.

FISET & MILLER AND
MATTHEWS & BROWNING,
Attorneys for Defendant.

And the defendant, The City of Lampasas, further answering, says that it, the city of Lampasas, was created and incorporated as a municipal corporation and city by an act of the legislature
10 of the State of Texas entitled An act to incorporate the city of Lampasas, in the county of Lampasas, approved April 18th, 1873, and from that time until now has continued to be a municipal corporation and city; that neither the bonds nor coupons mentioned in plaintiff's petition nor either of them were issued or signed by or by the authority of this defendant, the said City of Lampasas, so incorporated, nor by or by the authority of the mayor, city secretary, city treasurer, city council, board of aldermen, or other officer of said city. Wherefore the defendant says that neither of said bonds or coupons is or was the act of defendant; that the organization assuming the corporate name of the city of Lampasas in and for some time prior to the year 1885, and of which W. J. Standifer assumed to be mayor, S. S. Potts assumed to be secretary, and W. S. Morris assumed to be treasurer, and by which and whom said bonds and coupons purport to have been issued and signed, is not and never has been duly incorporated.

MATTHEWS & BROWNING,
Attorneys for Defendant.

J. W. Townsen, being duly sworn, upon his oath says the matters and things stated in the foregoing plea are true, and that he, the said J. W. Townsen, is mayor of defendant city.

J. W. TOWNSEN.

Subscribed and sworn to before me this 29th day of June, A. D. 1899.

W. H. BROWNING,
[L. S.] *Notary Public, Lampasas Co., Texas.*

And the said defendant, The City of Lampasas, further answering, says that it was incorporated as a body politic and corporate under the name and style of the corporation of the city of Lampasas by a special act of the legislature of the State of Texas entitled "An act to incorporate the city of Lampasas, in the county of Lampasas," approved April 18th, 1873, in and by which act the boundaries of said city were defined and established, and by reason of the provisions of said act this defendant became an incorporated city with the boundaries set forth in said act, within which was an area
11 of about 553 acres, and ever since that time has continued to be an incorporated city or municipal corporation.

That section three (3) of said act provides for the election of a mayor and eight aldermen of said city by the qualified electors of

said city, and section five (5) thereof provided that the mayor and aldermen should appoint a marshal, secretary, and city attorney of said city, and section nine (9) thereof limited the right of suffrage to male residents of said city who had attained the age of twenty-one years, and section thirteen made provision for the first election of mayor and aldermen and provided that all subsequent elections should be held on the first Monday in January every second year by the mayor, and section fourteen (14) provided that said act should take effect and be in force from and after its passage. For a more particular description of said act reference is made to page 288 of the Special Acts of the legislature of said State passed in the year 1873 and printed by the authority of said State; that in pursuance of the provisions of said act the city government of the said city of Lampasas so incorporated was in the year 1873 organized, and until the — day of ——, 1876, maintained its organization with all officers required by said act.

That afterwards, about the 21st day of February, 1883, when said city was and for nearly six years had been without officers and without any election therefor having been held, the county judge of Lampasas county, ignoring the said act and ignoring the fact that the said city of Lampasas was an incorporated city, made and caused to be entered on the minutes of the commissioners' court of said county an order, which, after reciting that there had been filed in his office an application by more than fifty qualified voters of the town of Lampasas, residing within the boundaries described in said order, asking that an election be held to determine whether or not the said town should be incorporated under the name of the city of Lampasas, with the boundaries mentioned in said order, which boundaries were fixed by the signers of said petition, and that there were more than one thousand inhabitants living within said
12 boundaries, directed and ordered "that an election be held at Dr. Lincecum's office on Western avenue, one door north of Cassell's drug store, in said town, and within said boundaries, on the 6th day of March, 1883, for the purpose of submitting to a vote of the qualified voters residing within said boundaries whether said town shall be incorporated as the city of Lampasas, with the boundaries aforesaid, and C. N. Witcher is hereby appointed as the presiding officer of said election;" that afterwards, to wit, about the 14th day of March, 1883, the said county judge made and caused to be entered on the minutes of the commissioners' court, as aforesaid, another order, which, after reciting that it appeared from the returns made to him of an election held within the bounds therein described on the 6th day of March, 1883, to determine whether or not said town should be incorporated as the city of Lampasas, with the boundaries in said last-named order mentioned, that a majority of the votes cast at said election were in favor of such corporation, declared and ordered that the inhabitants of said town be, and by virtue of said election were, incorporated as the city of Lampasas with certain boundaries, which were set forth in said order, and which were the same as those set forth in said application and in said order made about the 21st day of February,

1883, and which included an area of about 1,500 acres, twice as many lots and blocks actually occupied as town property, and more than twice as many inhabitants as were included with the boundaries described in said special act of the legislature passed in 1873, and included most of the territory described in said act.

That said county judge afterwards made an order for an election of officers for said Territory and organization, which he had declared to be organized as the city of Lampasas, and in pursuance thereof an election was held by the inhabitants of said Territory on, to wit, the 17th day of April, 1883, and certain persons were declared by said county judge to be elected to the various offices, including the office of mayor, marshal, city attorney, treasurer, assessor and collector, engineer, and five aldermen; S. S. Potts, whose name appears in plaintiff's petition as signed to the bonds
13 and coupons mentioned therein as secretary, having been elected secretary at said so-called election held on April 17th, 1883, and W. S. Morris, whose name appears in plaintiff's petition as signed to said bonds as treasurer, having been elected treasurer at said so-called election held on April 17th, 1883. Said Potts, who lived outside of the territory mentioned in said special act, and said Morris claimed to be secretary and treasurer, respectively, of said organization claimed to have been incorporated as the city of Lampasas by virtue of said petition or application, election for incorporation and orders of said county judge, and said other proceedings had and made in said year 1883; and after said pretended election held on April 17th, 1883, other pretended elections were held in said territory described in said orders, from time to time, for municipal officers, and all of said elections held in 1883 and said subsequent elections were held in accordance with the general laws of the State of Texas in regard to cities, and not in accordance with said special act, and that at all such elections votes were cast by inhabitants residing in said boundaries described in said special act and by persons residing outside thereof, but in the boundaries described in said orders of said county judge, and at such elections so held persons were elected to the office of aldermen and to other offices who resided outside of the boundaries described in said original act, but inside of the boundaries described in said orders of said county judge.

That during all the time from 1876 to the year 1889 this defendant, who was and is the only legally created and incorporated municipality under the name of the city of Lampasas, was without officers, and during all that time there were no persons claiming to be or act as such officers of this defendant, and all persons claiming or pretending to act as officers of the city of Lampasas during that period were claiming and pretending to act under the said organization or pretended corporation attempted to be created as aforesaid in the year 1883, and were not claiming to act under said act of 1873.

14 That none of said bonds or coupons mentioned in plaintiff's petition were issued or signed by or by authority of defendant or any of its officers, but if same were signed or issued

by any persons they were signed and issued by persons assuming to be officers of said organization attempted to be created by said proceedings in 1883, and neither it, though acting under the name of the city of Lampasas, nor its pretended officers, in issuing and signing the same, attempted or pretended to bind this defendant, but intended and attempted to bind such illegal organization attempted to be created by said proceedings in 1883. Wherefore defendant says it is not liable on said bonds or coupons.

That heretofore, to wit, about the 29th day of October, 1889, and while one T. J. Largen was assuming to be mayor of said pretended city of Lampasas attempted to be incorporated by said proceedings in 1883, and other persons were assuming to hold the other offices of said pretended city of Lampasas attempted to be created by said proceedings in 1883, the State of Texas, upon the relation of W. B. Abney, instituted a proceeding in the nature of a *quo warranto* proceeding in the district court of Lampasas county, in which the city of Lampasas, as well as the said pretended city of Lampasas, was situated, against said T. J. Largen and such other persons assuming to be officers under such illegal organization created by said proceedings in 1883. The style of said suit so instituted by the State of Texas was "The State of Texas, on the relation of W. B. Abney, *versus* T. J. Largen *et als.*," and the number thereof was 1227 on the docket of said district court; and the object of said suit was to have the defendant therein prevented and enjoined from usurping or intruding into, holding, or executing the offices which they claimed to hold by virtue of said pretended corporation created under said proceedings in 1883; that said cause coming on to be heard in said district court on the 20th day of November, 1889, the defendants therein were adjudged guilty of usurping, intruding into, and unlawfully holding and executing the offices claimed by each as aforesaid, and they were each enjoined from further usurping, intruding into, holding, or executing the offices so claimed by each.

That in and by the pleadings in said cause the only material question involved was the legality or illegality of said proceedings in 1883, whereby said pretended city of Lampasas was attempted to be incorporated, and the rights of defendant therein to hold their respective offices was dependant upon the legality of said proceedings in 1883; that from said judgment of the district court in said cause No. 1227 the defendants appealed to the supreme court of the State of Texas, which last-named court, on the 31st day of January, 1890, affirmed the said judgment of the district court; that immediately after said last-named date the pretended municipal organization under said proceedings of the year 1883 was abandoned, and no further proceedings or acts have since been had or done thereunder or by virtue thereof, and the water works thereof were taken possession of by the owners of some or all of the bonds claimed by plaintiff to have been issued; but thereafterwards, in the year 1890, officers of the city of Lampasas, as incorporated by special act of the legislature, were duly elected, and they and their successors in office have since said last-named year continued to admin-

ister and are now administering the affairs and business of defendant, and have not been and are not acting under or for said pretended corporation by which said bonds were issued, and have taken possession of none of the property of said pretended corporation, nor had the opportunity of taking possession thereof; that the ordinance by virtue of which the bonds and coupons mentioned in plaintiff's petition were issued, as appears from said petition and from the copy of said ordinance printed on the back of said bonds, if any such ordinance was passed by any city or council, was passed by a city council assuming to be the city council of the city of Lampasas, as attempted to be created by said illegal proceedings in 1883, and by persons assuming to be the city council of said pretended corporation attempted to be created in 1883 by the proceedings hereinbefore mentioned, but who did not assume at
16 the time of the passage of same, or at any other time, to be the city council of this defendant. Wherefore defendant says it is not liable on said coupons.

That by the terms of said special act of the legislature by which defendant became an incorporated city the right to pass ordinances, impose taxes, and issue bonds for public improvements was conferred upon the mayor and board of aldermen, composed of eight members, and such board of aldermen was made the legislative body of the city created by said special act, and no powers whatever were conferred upon a city council or upon a board of aldermen composed of five members; wherefore defendant says that even if the persons who acted as said council assumed to be and acted as the city council of defendant in passing the ordinance alleged by plaintiff to have been passed, still the said ordinance, if any was passed, as alleged, was not binding on defendant and did not authorize the issuance of the bonds alleged by plaintiff to have been issued; that section 12 of said special act by which defendant was incorporated was as follows: "All ordinances and resolutions enacted by said corporation shall be published by posting notice at three public places in the limits of the corporation or by publishing for at least three successive weeks in a newspaper published within the limits of said city."

That section 9 of said ordinance, which is No. 59 printed on the the back of said bonds alleged by plaintiff to have been issued by the defendant, is as follows:

"SEC. 9. At the end of ten years from the date of issuance of said bonds, or as soon thereafter as practicable, the city council may designate by an order entered of record in the minutes, the numbers and amount of the principal, (not exceeding $10,000.00) and date of payment of such bonds of this issue as the city desires to redeem, said numbers being designated by lot or otherwise, as the council may then determine, provided the numbers designated are consecutive, and a copy of such order shall be published in some newspaper in the city of Lampasas, and such other notice
17 personally or otherwise, may be given to the holder of such designated bonds, their agents or representatives, as the council may determine at the time of such designation, and such

designated bonds shall be paid upon presentation, and shall cease to bear interest from and after the date of payment fixed by said order; and at the end of each period of five years thereafter five thousand dollars ($5,000) of the principal of said bonds may be redeemed in like manner."

That there appears also printed on the back of said bonds alleged to have been issued by defendant another ordinance, which is as follows:

"*Ordinance No. 65.*

"An ordinance to be entitled 'An ordinance to amend section 9, of ordinance No. 59, passed and approved January 6th, 1885.'

"SECTION 1. Be it ordained by the city council of the city of Lampasas, That section 9, of ordinance No. 59, passed and approved January 6th, 1885, be so amended as to read hereafter as follows:

"SEC. 9. At the end of ten years from the date of issuance of said bonds, or as soon thereafter as practicable the city council may designate by an order entered of record on the minutes, the numbers and amount of the principal not exceeding $10,000 and date of payment of such bonds of this issue as the city desires to redeem, said numbers so designated shall be consecutive, beginning at No. 1, and a copy of such order shall be published in some newspaper in the city of Lampasas, and such other notice, personally or otherwise, may be given to the holder of such designated bonds, their agents or representatives, as the council may determine at the time of such designation, and such designated bonds shall be paid upon presentation and shall cease to bear interest from and after date of payment fixed by said order; and at the end of each period of five years thereafter, five thousand ($5,000) dollars of the principal of said bonds may be redeemed in like manner."

"SEC. 2. That this ordinance take effect and be in force from and after its passage.

"Passed March 21st, 1885.

"Approved March 21st, 1885.

"W. J. STANDEFER, *Mayor.*

"Attest: S. S. POTTS, *Secretary.*"

And defendant avers that if said ordinance No. 59 was
18 passed by said city council, then said ordinance No. 65, amendatory thereof, was also passed by the same city council and made material changes therein; that said amendatory ordinance was not passed or approved until March 21st, 1885, and said bonds, as appears from plaintiff's petition, were issued on the 27th day of March, 1885; wherefore defendant says that said amended ordinance could not have been published or posted for the time required by said special act, and it had not taken effect at the time said bonds purport to have been issued or at the time they were in fact issued, if the same were ever issued.

And defendant says that even if it should be held that the persons acting as members of the city council which passed it had the

right to pass and did pass the ordinance printed on the back of the said bonds alleged to have been issued by defendant and said ordinance became effective, still the defendant is not liable on said bonds, because same were not executed, signed, issued, or registered or delivered under the circumstances authorized by said ordinance or the laws of the State of Texas then in force.

That sections 3, 4, and 5 of said ordinance No. 59 are as follows:

"SEC. 3. Said bonds shall be issued to the amount of forty thousand dollars ($40,000) or so much thereof as may be necessary, shall be dated at the time of issuance, and shall bear interest from said date of issuance.

"SEC. 4. Said bonds shall, at the time of their issuance, be dated and signed by the mayor, countersigned by the city secretary, and registered by the city treasurer.

"SEC. 5. The city secretary and the city treasurer shall each keep a record of the number, date of issuance, and amount of said bonds, and the number, amount and date of maturity of the coupons thereto attached, and shall endorse the countersigning and registration thereof on each of said bonds."

And defendant avers that said bonds were never registered by the city treasurer, as required by section 4 of said ordinance,
19 and said city treasurer did not endorse on each or any of said bonds the registration thereof.

Section 10 of said ordinance provided that said bonds provided for therein should be sold at not less than par and in such manner as was at the time of the passage of such ordinance provided for or as might thereafter be provided for by ordinance, resolution, or otherwise, and that the proceeds of said bonds should be devoted exclusively to the construction of a suitable system of water works for fire protection, family supply, and other public and private purposes and for the purchase of such fire department supplies as might be deemed necessary by said city council.

And defendant avers that said city council did not after the passage of said ordinance make any provision for the sale of said bonds, and same were in fact not sold for as much as their par or face value and were not sold for any sum, but some person, to defendant unknown, delivered all of said bonds mentioned in said ordinance to some person unknown to defendant, but believed to be F. O. Brown, in payment for a system of water works, which at the time of such delivery was of a value not exceeding twenty thousand dollars, and same were so delivered to evade the provisions of said ordinance, which required that the said bonds should be sold at not less than par.

And defendant further says that said bonds have not been registered by the comptroller of public accounts of the State of Texas in a book kept for that purpose, or if the same have been so registered, then said comptroller has not endorsed on each or any of the bonds so registered his certificate of registration, authenticated by his official seal, as required by law; wherefore defendant says it is not liable on said bonds.

And the defendant further says that at the time said bonds pur-

port to have been issued, to wit, in the year 1885, the only existing legal city of Lampasas was this defendant, which was, as before shown, incorporated by special act of the legislature in 1873,
20 and that the taxable property within the boundaries of defendant during either the year 1884 or 1885 did not exceed in value the sum of one million dollars, and that the levy and collection of a tax of twenty-five cents on the one hundred dollars' valuation of taxable property within defendant's boundaries at any time during the years 1884 or 1885 or since would not produce enough revenue to pay the interest on the issue of $40,000 of bonds mentioned in plaintiff's petition and create a sinking fund of at least two per cent.; wherefore defendant says said bonds were issued without authority of law and contrary to provisions of the constitution and laws of the State of Texas.

And defendant further says that heretofore, to wit, from February 1st, 1883, to January 1st, 1886, the defendant being the only existing legal city of Lampasas and having within its boundaries, as fixed by said special act of 1873, only an area of about 553 acres and a population of less than one-half that included within the boundaries as set forth in said order of said county judge—which last-mentioned boundaries included an area of 1,495 acres—and there then being no general law authorizing the incorporation of cities so as to include within their boundaries a city already incorporated by special act of the legislature or otherwise, and there then being no law by which the boundaries of a city incorporated by special act of the legislature could be extended or by which additional territory could be added thereto, and this defendant and its inhabitants, acting through its board of aldermen, then having a right to determine whether the provisions of the Revised Statutes relating to cities and towns should be adopted in lieu of said special charter, and having the right to determine what public improvements should be made within its boundaries and what taxes should be levied on the property therein, a number of people residing within the boundaries described in said order of said county judge, most of whom resided outside of defendant's boundaries, caused the application hereinbefore mentioned to be presented to said
21 county judge and caused each and all of said orders to be made by said county judge and caused said pretended municipal organization of 1883 to be formed without defendant's voters having an opportunity to be heard on the question of the boundaries of the proposed new corporation, and by reason of the fact that a majority of the voters within the boundaries described in said orders of said county judge resided outside of defendant's boundaries it was possible for them to organize said pretended corporation of 1883, including all the inhabitants of defendant, without their consent, all of which was done over the protest and opposition of a great number of tax-payers and voters within defendant's boundaries prescribed by said special act of 1873; and thereafterwards the officers of said organization attempted to be created by said proceedings in 1883 passed said ordinances mentioned in plaintiff's petition, by virtue of which said bonds were afterwards issued, by

which ordinances a special ad valorem tax of twenty-five cents on every one hundred dollars' worth of property was levied and ordered to be assessed and collected for the year 1885 and subsequent years on all property subject to taxation within the city of Lampasas; and defendant therefore says that said municipal organization of 1883 was formed and said ordinances passed without authority of law, and if said ordinances are enforced as now sought to be enforced and said bonds are held to be binding on this defendant, then the necessary result thereof will be that the tax-payers residing within the boundaries fixed by said act of 1873 will be required to pay more than one-half of the principal and interest due and to become due on said bonds, whereby they will be deprived of their property without due process of law and in violation of section 1 of the 14th amendment to the Constitution of the United States.

And defendant further says that said pretended organization of 1883, by the officers of which said bonds were issued, was attempted to be created and formed under the provisions of chapters one and eleven of title 17 of the Revised Statutes of 1879 of the State of Texas and acts of the legislature of said State amendatory
22 thereof, and all of said orders made by said county judge were made in accordance with the provisions thereof, and said bonds were attempted to be issued in accordance with the provisions thereof; that the legislature did not fix the boundaries of said pretended organization, nor did it or said statutes or amendments thereto make any provision by which the power of the legislature to fix boundaries of municipal corporations was delegated to any recognized judicial, executive, or political organization, but the power was delegated by said chapter 11 to any 20 qualified voters, and by said chapter 1 to any fifty qualified voters to fix the boundaries of the territory in which they propose to form a municipal corporation, and the power to determine whether cities incorporated by special acts should be governed by the provisions of the special acts or by the general laws of the State relating to municipal corporations was by said chapter delegated to the city councils of such cities; that said delegation of legislative power is in violation of article 2 of the constitution of the State of Texas, and that chapters I and II of title 17 of said Revised Statutes of the State of Texas and acts amendatory thereof are in violation of sec. 1 of the 14th amendment to the Constitution of the United States, in that they provide for the formation of municipal corporations with power to levy taxes on property therein with boundaries not fixed by the legislature or by any body or tribunal before whom the residents of the territory proposed to be incorporated could be heard; and said pretended organization of 1883 attempted to be formed under said unconstitutional laws is null and void, and its attempt and the attempt of its officers to bind the residents and tax-payers of defendant by the issuance of said bonds, and to levy and collect a tax on their property to pay said bonds, was an attempt to deprive them of their property without due process of law, in violation of said section 1 of the 14th amendment to the Constitution of the United States.

And defendant further says that the plaintiff's cause of
23 action, if any he has or had, on the coupons mentioned in his petition, which became due on January 1st and July 1st, 1890, 1891, 1892, and January 1st, 1893, accrued more than four years before the institution of this suit, and a recovery thereof is barred by the statutes of limitation of the State of Texas, which are here interposed to such a recovery.

And defendant, further answering, says that after said organization created by said proceeding had in 1883 had been abandoned, and after said pretended corporation had ceased to transact any business, all property it had acquired from the year 1883 until about January 31st, 1890, was also abandoned by it and its pretended officers; that among such property was said system of water works, including pumps, boilers, stand-pipe, and the real estate on which same was situated, water mains and other fixtures and supplies, all of said system of water works except about two-thirds of the water mains being outside of the territory described in said special act, but inside of the boundaries of said pretended corporation; that prior to such abandonment one H. E. Hediman, who was acting as superintendent of such water works under the employment of said pretended corporation organized in 1883, was in possession and control of said system of water works and continued in such possession as such superintendent until the time of such abandonment, and thereafterwards continued in such possession until about January 31st, 1891, claiming the right to hold possession of and operate same because said pretended corporation was indebted to him; that about January 31st, 1891, one W. N. Coler, Jr., claiming to own, hold, and control all of the bonds mentioned in plaintiff's petition, and who did in fact then own, hold, and control some of said bonds, but which of them defendant does not know, and then believing that he had no cause of action against the City of Lampasas thereon, induced said Hediman to deliver to him the possession of said water works, as the owner of all of said bonds, and the said Coler and his assigns have from then until now continued in possession thereof, claiming tc be the owners thereof and receiving all the revenue
24 thereof; that after the decision of said case of Largen *vs.* The State and the said abandonment of said property neither the plaintiff or any other holder of said bonds have ever asserted any right to recover thereon until the time of the institution of this suit; that immediately after the decision of said case of the State of Texas *vs.* Largen *et al.*, in the district court of Lampasas county, the plaintiff and the holders of said bonds had notice of said decision, and they also had notice of the judgment of the supreme court of said State of Texas affirming the judgment of said district court immediately after the same was rendered, and thereafterwards no interest was paid on said bonds, though the same had been promptly and regularly paid theretofore as the interest coupons became due; that the defendant and the plaintiff herein and the other holders of said bonds thereafterwards believed that under the law as announced in the opinion of said supreme court in said case of Largen *vs.* The State of Texas the said bondholders had no claim or cause of action

against defendant on said bonds, and continued so to believe until the time of the institution of this suit; that by the non-action of the said bondholders and their failure to demand and sue for the interest due on the coupons of said bonds which matured on and after January 1st, 1890, the defendant was induced to believe and did believe that the holders of said bonds had abandoned any claim they might have had against the defendant on account of the issuance of said bonds, and did not intend to assert any right thereunder, and, so believing, afterwards, to wit, about the 28th day of March, 1894, issued its negotiable bonds, dated January 1st, 1894, to the amount of eighteen thousand dollars, bearing interest from date at the rate of six per cent. per annum, due — years after date, and sold the same for the purpose of obtaining money to build a public school building in the said city of Lampasas, which bonds were registered in the office of the comptroller of the State of Texas on April 2nd, 1894, and with the proceeds of sale of said bonds known as school bonds did build said public school building, all of which bonds are still outstanding and unpaid, and the purchasers of said last issue of bonds purchased same believing that the holders of the issue of bonds described in plaintiff's petition had abandoned all claims against the defendant thereon; that the taxable property of the city of Lampasas is now less than eight hundred thousand dollars in value, and the amount of revenue that can be derived therefrom and appropriated to pay the interest thereon and provide a sinking fund of two per cent. is only about eighteen hundred dollars; that said school bonds would not have been issued by defendant or bought by those who purchased same or those who now hold same except for the action of the holders of the bonds described in plaintiff's petition, whereby the defendant and said purchasers were induced, as aforesaid, to believe that the holders of said bonds described in plaintiff's petition had abandoned all claim against defendant thereon; and, so believing that the holder- of the bonds described in plaintiff's petition had abandoned all claim against the city of Lampasas thereon, and being induced to so believe by the said non-action of such holders, as well as by the action of said holders in trying to make individually liable thereon the persons who, claiming to be officers, issued said bonds, and in trying to make liable thereon said F. O. Brown, who put them in circulation, and brokers who had sold or negotiated said bonds, all of which efforts of said holders were made upon this belief and theory that said water-works bonds were not binding obligations, the defendant, since the said 1st day of January, 1894, has contracted various and sundry debts and obligations in establishing a fire department, building bridges, and making other public improvements which it would not have contracted if it had believed said water-works bonds to have been valid, and which it will be unable to pay and its credit will be irreparably ruined, and those who have become its creditors since said last-named date will not be able to collect any part of their said claims if said water-works bonds are held to be obligations binding on de-

fendant, for if valid the power of the city to create indebted-
26 ness was exhausted by their issuance, and by reason of such action and non-action of the holders of said water-works bonds, inducing defendant to believe that they did not intend to claim any rights against defendant thereon, the defendant has refrained from making any effort to obtain possession of said water works, but the same has from the year 1890 until now remained in the possession of said Coler and his vendees, and the defendant has recognized their right thereto and become barred from recovering possession of same by the statutes of limitation of the State of Texas. Wherefore defendant says the plaintiff is estopped from recovering of defendant on the coupons sued on.

Premises considered, defendant asks to be discharged with its cost.

FISET & MILLER AND
MATTHEWS & BROWNING,
Attorneys for Defendant.

Endorsement: No. 2296. James M. Bell *vs.* City of Lampasas. Defendant's first amended answer. Filed July 11, 1899. D. H. Hart, clerk. Fiset & Miller, attorneys-at-law, Austin, Texas.

Plaintiff's First Supplemental Petition.

Filed July 11, 1899.

In the U. S. Circuit Court for the Western District of Texas, at Austin.

JAMES M. BELL
vs.
THE CITY OF LAMPASAS. } No. 2296.

In the above cause now comes the plaintiff and files this his 1st supplemental petition in response to defendant's 1st amended original answer herein filed, and for rejoinder to the matters therein pleaded plaintiff submits:

1st. He demurs generally to the facts pleaded by defendant and says the same constitute no defense to plaintiff's suit, and of this he prays judgment.

27 2nd. He demurs specially to said answer and says the same shows that the city of Lampasas has been at all times an existing, valid municipal corporation, and shows affirmatively that the qualified voters of said city in the exercise of the legislative power delegated to them under the general laws of the State, did, by the adoption of the general charter in 1883, upon the vote of the people duly had under the forms of law, thereby repeal the special charter of 1873 to the same effect as though the legislature had by its act granted this general charter covering the territory therein embraced, and for this reason, whatever may have been the provisions of said special charter, all powers conferred in the general charter were conferred upon said city of Lampasas, and of this plaintiff prays judgment.

3rd. Said answer shows upon its face that the city of Lampasas, as chartered by general act, upon vote of the people in the exercise of their delegated legislative authority, is a valid corporation, and that such city, covering the full limits therein set out, continues to exist, and that the obligations herein sued upon are valid and binding obligations of said city, and that it is immaterial what officers are serving it as mayor, aldermen, etc., or whether they are exercising jurisdiction over all the territory which they have the lawful right to or not, and of this plaintiff prays judgment.

4th. Further specially excepting, plaintiff says that the judgment in the *quo warranto* proceeding of The State of Texas *vs.* T. J. Largen *et al.* is not properly pleaded and cannot avail defendant as a defense herein, because it is not pleaded therein that the holders of the water-works bonds (the coupons from which are herein sued upon) were made parties defendant, and therefore said judgment is a nullity and said city of Lampasas is at this time lawfully existing under said incorporation of 1883, and as such is liable to plaintiff herein, and of this plaintiff prays judgment.

5th. Further specially excepting, plaintiff says that it affirmatively appears from defendant's answer that said city of
28 Lampasas, in 1885, while acting as such and recognized by the State of Texas as a municipal corporation having power to build water works and issue negotiable bonds to pay for the same, did in fact issue such bonds in absolute good faith, without objection on the part of the State or of any citizen or tax-payer of said city, and place such bonds upon the market, and therefore it appears from said petition that the State and the citizens of said city became and are estopped from questioning the regularity of said incorporation or doing any act which would in any manner impair the obligations of said city to pay said bonds by the levy and collection of the full tax provided for as part of the contract to pay said bonds, and of this exception plaintiff prays judgment.

6th. That as to the allegation that after the judgment in the Largen case the officers then acting for said city of Lampasas abandoned their offices and the water works for which the coupons in suit were in part executed were taken possession of in January, 1891, by one Coler, and have since been in his possession, plaintiff says that these allegations constitute no defense to this suit, because it is not alleged that there was any legal settlement of said bonds, and because it is not alleged that the said Coler represented the bonds from which the coupons in suit were taken, and because since said coupons and their principal bonds were negotiable instruments, payable to bearer, no such settlement would be effective in law without requiring said Coler to surrender said bonds and retire the same, together with the unmatured interest coupons, from circulation.

7th. That the allegation in reference to the subsequent action of the defendant in issuing other bonds and creating other indebtedness is wholly insufficient in law to create an estoppel against the holders of the water-works bonds.

8th. That from the facts pleaded by defendant showing that after Largen and his associates abandoned their offices there was an at-

tempted reorganization of the corporation of the city of Lampasas,
and that there is now in existence a city government assum-
29 ing to act for and in the name of the city of Lampasas, it
therefore appears that under the validating act of the legislature of the State of Texas passed and which became a law on the 12th day of March, 1891, the city of Lampasas, with its boundaries as fixed in the charter adopted by vote of the people in 1883, became a perfect, valid corporation and liable to plaintiff upon the coupons involved in this suit.

Upon each of the foregoing exceptions plaintiff prays the judgment of the court.

WEST & COCHRAN,
Attorneys for Plaintiff.

And for further reply to the merits of the defenses set up by defendant, if any be needed thereto, plaintiff avers:

1st. That if any question can arise as to which charter the city of Lampasas was acting under in January and March, 1885, when said city issued and placed upon the market its negotiable bonds and coupons, a part of which are herein sued upon, then this plaintiff says that said city had full authority under either charter to issue said bonds and coupons, in this, that the special charter granted to defendant, as pleaded by it, expressly authorized defendant, among other things, to construct water works and to issue bonds to pay for such public improvements, and if it be held that the city of Lampasas, as existing in 1885, does not now exist, a proposition which plaintiff denies, then plaintiff says that the mayor and city council which did issue such bonds were acting in good faith as officers of the city of Lampasas, assuming full authority so to do without dispute by the State of Texas, and as such were *de facto* officers of said city, and acting as they did in the exercise of a power conferred upon them in said special charter, their acts bind the defendant now existing and the coupons sued upon as valid obligations of said defendant, and as such plaintiff prays judgment thereon.

2nd. For further special reply said plaintiff alleges that by
30 the act of adopting the general charter in 1883, by vote of
the people who resided and did business in said town or city of Lampasas and were citizens thereof, following urban pursuits, such action on the part of the people, by this act of exercising a delegated legislative power, thereby made such city a valid corporation under said general charter, notwithstanding the said special charter, and that to the extent of the limits fixed in this general charter the city of Lampasas became and has ever since been a legally existing corporation, and that all lands and property within said limits are now within the jurisdiction of the city of Lampasas, and if defendant's officers are not assuming jurisdiction over said entire limits that their failure so to do in nowise affects the validity of plaintiff's coupons, and he prays judgment establishing his said debt as against the corporation with the full limits existing in 1885, when said debt was created.

3rd. Plaintiff specially denies that the judgment of ouster pleaded by defendant as occur-ing in 1890 by the suit of The State *vs.* Largen *et al.* has any binding force whatever, but is an absolute nullity because the holders of the water-works bonds and of the coupons herein sued upon were not made parties to said suit, and because to give said judgment effect would be to declare that the State could destroy the corporation and with it the agencies existing when said contracts were made to assess and collect the special tax levied as part and parcel of said contract as a means of paying said bonds and coupons, and thereby impair the obligations of a contract in violation of the Constitution of the United States and of the State of Texas; plaintiff prays judgment accordingly.

4th. Plaintiff further alleges that, whatever may have been the legal effect of said judgment of ouster, the defendant, City of Lampasas, immediately after said Largen and others abandoned their said offices, proceeded to reorganize its city government under its said special charter, and that its mayor and city council again met on March 19th, 1890, for the first time under this reorganization, and on March 22nd, 1890, said city counsil duly passed a reso-
31 lution to abandon said special charter and to adopt in lieu thereof the same general charter under which it had been acting from 1883, and that thereafter, on December 26th, 1890, by proper vote duly and legally had and certified by persons living within what was known as the Lampasas Springs first and second additions to the town of Lampasas, the said city council added the principal part and substantially all of the inhabited portion of that part of the territory embraced within the incorporation of 1883, which was outside of the limits fixed in the charter of 1873; and plaintiff alleges that the business part of the city of Lampasas has at all times been within the special charter limits of 1873, and that within this area nearly all persons living in said town, whether within the charter limits of 1883 or in the fifteen or twenty additions laid out into city lots, parts of which are outside of said limits, have at all times done business following urban pursuits, and that after attaching the additions in December, 1890, fully ninety per cent. of the population and a like large proportion of the tax values of said incorporation as existing from 1883 to 1890 were brought within the city of Lampasas, as claimed by defendant, and there was also brought within said limits the system of water works, all bridges, graded streets, and other property of said city government of 1883. Wherefore plaintiff says that by this act of reorganization and attaching additional territory the city of Lampasas within this restricted area in any event became the lawful successor of said pre-existing *de facto* organization, and as such succeeded to the ownership of said system of water works and its other properties and become bound for all of its debts, including the coupons here sued upon, and as such plaintiff prays judgment.

5th. Plaintiff further alleges that, whatever may have been the vice or irregularity in the adoption of the charter in 1883 by the vote of the people, the citizens and tax-payers of said city of Lampasas acquiesced in the acts of their officers in constructing a sys-

tem of water works and in issuing its negotiable bonds to pay
32 for the same, and that by such acquiescence in the act of their said officers all persons embraced in said limits became and are estopped to deny the validity of said bonds, and that by permitting said corporation to exist and to issue its negotiable bonds in payment of a system of water works and by the registration thereof by its comptroller, the proper executive officer of the State, appointed by law for such purpose, the State of Texas lost its right to interfere in any manner with said city of Lampasas in its proprietary or private rights connected with the ownership of said water works and its rights and duties to assess and collect the taxes specially contracted to be levied to pay said bonds, and that any attempt by the State to interfere therewith would be void as impairing the obligation of the contract, and plaintiff here pleads that whatever effect the proceedings of ouster against Largen *et al.* may have been in other respects, it has no binding force or effect as against plaintiff as the holder of its coupons connected with said bonds.

Plaintiff further alleges that at the first session of the legislature after the decision was rendered in the said Largen case said legislature, having full power and right so to do, did pass two acts in substance and effect validating all acts done by cities and city councils acting as *de facto* corporations, and also validating their charters, and plaintiff here pleads said validating acts in aid of his said coupons and says the same validated and cured any vice or irregularity existing in defendant's charter of 1883, and that upon the passage of said acts defendant's officers were vested with full authority over all territory embraced in said charter of 1883 and now have such authority and should exercise the same in accordance with law; and plaintiff prays judgment accordingly.

WEST & COCHRAN,
Attorneys for Plaintiff.

Endorsed: James M. Bell *vs.* City of Lampasas. 1st supplemental petition. Filed July 11, 1899. D. H. Hart, clerk.

33 *Defendant's First Supplemental Answer.*

Filed July 11, 1899.

In United States Circuit Court for Western District of Texas, July Term, 1899.

JAMES M. BELL
vs.
CITY OF LAMPASAS. } No. 2296.

Now comes the defendant in the above entitled and numbered cause, and, leave of the court being first had, presents this its first supplemental answer in reply to the plaintiff's first supplemental petition herein, filed on the — day of July, 1899, and says:

First. Defendant demurs to said first supplemental petition and says that the facts therein pleaded do not constitute or show any

reason why the matters pleaded by defendant are not a complete defense to plaintiff's action, and of this defendant prays the judgment of the court.

Second. And for special exception to so much of said supplemental petition as sets up the reorganization of the city of Lampasas under its special charter on March 19, 1890, and the abandonment of its special charter and the adoption of the Revised Statutes in lieu thereof by its city council and the addition of other territory thereto, the defendant says such organization and addition of territory could only be under articles 340, 516, 513, 503 of the Revised Statutes of the State of Texas of 1879, which articles are, as shown in defendant's amended answer herein, in violation of section 1 of 14th amendment to the Constitution of the United States. Further, the legislature had no right to delegate to any other body the right to repeal a general or special law; further, said articles of the Revised Statutes were in violation of section 56, article 3, of the constitution of the State of Texas, in that they authorized a city
34 council to repeal a special act of the legislature incorporating a city, and that said act, though in the shape of a general law, is a special act, and left the city council to determine whether the city council be governed by a special act or the general laws of the State, and by said articles the legislature attempts to regulate the affairs of cities.

Third. And for special exception to so much of said supplemental petition as pleads the validating acts therein mentioned the defendant excepts because said acts, as shown by the terms thereof, were not intended to and did not validate such acts and proceedings as those pleaded by plaintiff and defendant as having been done and had in 1883, whereby a city was attempted to be incorporated so as to include an existing city, especially after the organization of 1883 had been abandoned. If such validating acts had any effect as to defendant, then they only validated the acts of the city council in 1890 in adopting the Revised Statutes. Further, said validating acts could only validate an act which the legislature would have had power to authorize to be done, and the legislature would in 1883 have had no power to authorize the incorporation of a city including another city; and, further, said validating acts were, in effect, special acts, and therefore void.

And of each of said exceptions the defendant prays the judgment of the court.

Fourth. The defendant denies all and singular the allegations in said first supplemental petition contained, except in so far as the same are admissions of matters pleaded by defendant.

Fifth. Defendant specially denies that said bonds were issued in good faith, and says if they were so issued they were not sold in good faith. Contrary to the provisions of the ordinance printed on the back thereof, they were not sold for money, but, in order to fraudulently evade the provisions and restrictions in said ordinance, they were exchanged for said system of water works, worth much less than the par value of said bonds.

Wherefore this defendant says it is not liable on said bonds.

35 FISET & MILLER AND
MATTHEWS & BROWNING,
Attorneys for Defendant.

Endorsed: No. 2296. James M. Bell *vs.* City of Lampasas. Defendant's first supplemental answer. Filed July 11, 1899. D. H. Hart, clerk.

Findings of Fact and Conclusions of Law.

Filed July 12, 1899.

In the Circuit Court of the United States, Western District of Texas, at Austin, July Term, 1899.

JAMES M. BELL
vs.
CITY OF LAMPASAS. } No. 2296.

Findings of fact and conclusions of law.

A jury having been waived by the parties and the cause submitted to the court upon an agreed statement of facts, which agreed statement of facts is as follows:

In United States Circuit Court for Western District of Texas, July Term, 1899.

JAMES M. BELL
vs.
CITY OF LAMPASAS. } No. 2296.

For the purpose of saving costs of witnesses we agree that the following are the facts in this cause and shall be treated as proven on the trial, but shall be considered only in so far as they are material to establish the allegations in the pleadings or relevant to the issues:

1. That the citizens of the city of Lampasas, in Lampasas county, Texas, were by special act of the legislature approved April 18th, 1873, granted a charter as a municipal corporation, under the name of the "corporation of the city of Lampasas," with boundaries containing an area of 553 acres, covering the original town plat
36 and a considerable area not laid out in regular blocks. In this special charter it was provided that the qualified voters should elect a mayor and board of aldermen, consisting of eight members, to hold office for the term of two years and until their successors should be elected and qualified; and it was further provided that the mayor and five aldermen should constitute a quorum for the transaction of business. It was also provided that the first election should be held within thirty days and on the first Monday in January of each alternate year thereafter by the mayor and three

aldermen. The act made no provision for dissolving the corporation, and no period of time was fixed for the expiration of the charter.

2. Under this special charter the said mayor and aldermen were granted power by ordinance, among other things, to construct water works, open, grade, and keep in repair the streets, build bridges, open sewers, to impose and collect taxes, not exceeding one per cent. per annum, and to issue bonds for public improvements. The mayor and aldermen were authorized to appoint a city marshal, who should also be *ex officio* assessor and collector of city taxes, and also to appoint a secretary and city attorney, but the office of treasurer nor any other officer than those named were — provided for.

3. That officers were elected and the said municipal goverment was exercised by them under the said special charter from 1873 until 1876, when a mayor and board of aldermen were elected who favored abolishing the said municipal government, and they, by formal resolution, decided to resign, and did so, and abandoned their said offices, and thereafter no steps were taken or action of any kind had under this special charter until March, 1890, after the decision of the supreme court of Texas in the case of Largen *vs.* The State of Texas, reported in 76th Texas Reports, page 323, hereinafter more fully referred to.

4. That the said city of Lampasas was in 1873 and has since continued to be the county-seat of Lampasas county, and had a
37 population in 1876 of about 800; that until the year 1882 the said town was without railroad facilities, when upon advent of a railroad it began to grow rapidly, and by April, 1883, had a population of about 4,500 people, with street railroad and other improvements. About 1884 the population began to decline, and continued to decline until about 1890.

5. That at all times the business part of the town has been chiefly confined to the court-house square and streets leading out from it, and has been within the bounds of the said special charter, but during and since 1882 business houses were built near the railroad depot, outside of said bounds and outside of the present limits, but inside of the boundaries of 1883, and business has been since transacted therein.

6. That after the advent of the railroad numerous additions were laid out to the town and residences built thereon by persons doing business in the town, and continued to grow in population until it reached about 5,000 in 1884 and 1885, when the decline in population began.

7. That in February, 1883, a petition was presented to the county judge of said Lampasas county by more than fifty qualified voters living in and around the limits of said town, asking that an election be ordered to determine whether the persons living within the limits in said petition set out should incorporate as a city of more than one thousand inhabitants, under the provisions of the general laws of Texas as contained in title 17 of the Revised Statutes. Upon this petition the said county judge made his order and an election was held, resulting in a majority vote in favor of said incorporation,

some of those voting living inside and some outside of the limits prescribed by said special charter, and upon return thereof the said county judge, by proper order, declared the result of the said election and declared the said city duly incorporated within the limits in said petition set out, and which contained an area of 1,495 acres, embracing practically all of the lands included within the
38 said special charter, and extending nearly one-half mile west, north, and east thereof, to include the railroad depot.

8. That in pursuance of this incorporation a municipal government was organized, with all the officers prescribed in the general charter contained in said title 17, some of the aldermen and other officers residing outside of the limits prescribed by said special act, and exercised all the powers and functions of a city of over one thousand inhabitants, organized under the general laws of the State of Texas, levying and collecting taxes and prescribing and enforcing police regulations without any one contesting or disputing the validity of its lawful rights to act as such until November 4th, 1889, when upon the relation of a citizen and tax-payer the district attorney, himself also a resident tax-payer, filed an information in the nature of *quo warranto* against T. J. Largen, who was mayor, and all other persons assuming to act as city officers under this corporation by vote of the people, alleging that the said incorporation by vote of the people in 1883 was invalid because of the fact that the said special charter granted in 1873 had never been repealed, and that the action of the officers in resigning in 1876 was without effect, and praying that the said Largen and his associates be ousted from office and the said incorporation of 1883 be declared invalid.

9. That said suit was instituted by the said district attorney without any direction by the attorney general or other executive officer of the State and without making any of the creditors of said corporation parties, and upon trial resulted in a judgment ousting the said Largen and associates; which judgment on appeal was affirmed by the supreme court of Texas on the 31st day of January, 1890, and its opinion may be found in vol. 76, at page 323, of the official published reports of said court.

10. That after the decision of the supreme court affirming said judgment of ouster the said Largen and associates ceased to act, and upon an order for the election of mayor and alderman under the special charter of 1873, made by the county judge of Lampasas county, an election was held by persons living within the
39 limits of said charter on the 18th day of March, 1890, and the persons elected as mayor and aldermen met and organized March 19th, 1890, and on March 22nd, 1890, by unanimous vote of the city council, it was resolved to accept the provisions of "title XVII of the Revised Statutes of the State of Texas in lieu of the charter granted by the legislature," and a copy of this resolution was duly certified and recorded, as required by law, and said city at once assumed to act under the general charter provided in said title 17, and is now acting thereunder.

11. That on December 26th, 1890, by a vote of a majority of the resident citizens of the added territory hereinafter mentioned, there

was added to the limits of the city, as set out in the special charter of 1873, the greater part of the land west of the same, which was included within the limits of 1883, and one tier of blocks additional, since which time the said city government has assumed jurisdiction over said added territory, but has not assumed any jurisdiction over that part lying north and east of said original limits and which was included within the limits of 1883.

12. The area of the territory added in December, 1890, was 428 acres, which embraced the greater part of the residence property of the city outside of its original charter limits of 1873.

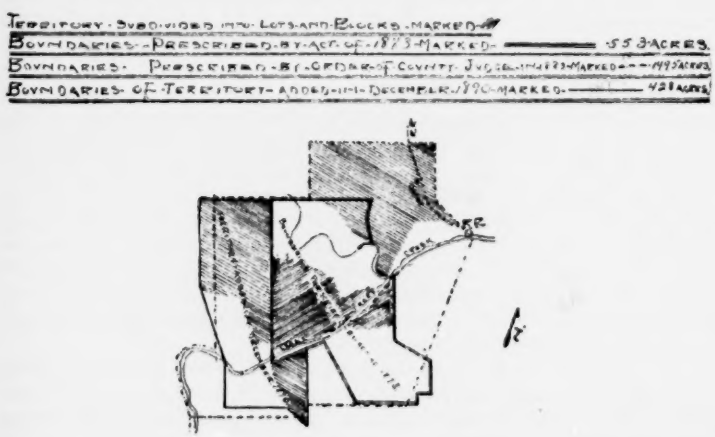
13. That the said territory lying north and east of said original limits, and which was within the limits of the charter of 1883 as adopted by the vote of the people, has situated thereon seventy-seven residence houses, occupied by persons ninety per cent. of whom follow some kind of business within the town as defined by charter limits of 1873. The following map shows the boundaries prescribed by act of 1873, the boundaries defined in the order of the county judge in 1883, the boundaries of the territory added in December, 1890, the territory subdivided into lots, blocks, etc.:

Territory subdivided into lots and blocks, marked .

Boundaries prescribed by acts of 1873, marked , 553 acres.

40 Boundaries prescribed by order of county judge in 1883, marked , 1,495 acres.

Boundaries of territory added in December, 1890, marked , 428 acres.


TERRITORY SUBDIVIDED INTO LOTS AND BLOCKS MARKED
BOUNDARIES PRESCRIBED BY ACT OF 1873 MARKED
BOUNDARIES PRESCRIBED BY ORDER OF COUNTY JUDGE IN 1883 MARKED
BOUNDARIES OF TERRITORY ADDED IN DECEMBER 1890 MARKED
553 ACRES
1495 ACRES
428 ACRES
CREEK
CREEK

14. All the books and papers of the city government of the city of Lampasas, under the charter of 1873 and 1883, were lost and could not be found, except the assessment-rolls for the year 1889, from which it appears that the assessed values of all lands within the city limits of 1889 was $664,429.00, and that the personal property was about $400,000.00, and that the said assessment was di-

vided as follows as to the lands, no division being shown as to personal property, viz: Within old limits of 1873, $452,444.00; within the part added in December, 1890, $157,915.00; and within the parts north and east, $68,970.00.

41 15. The said rolls show the names of 438 voters, divided as follows, viz: Residing within old limits of 1873 were 175; residing on part added in December, 1890, 167; residing on parts north and east, 96.

16. In January, 1885, the city council of said city of Lampasas, elected under the provisions of the general charter contained in title 17 aforesaid, and assuming to act thereunder and not under the provisions of the charter of 1873, in good faith and in response to a general demand of the business men of the city for fire protection and to furnish water to the city, then having a population of about 4,500, determined to build a system of water works for the city and to pay for the same with the proceeds of sale of bonds of the city, and to this end, after full and open discussion, did pass ordinances to the following effect, viz:

Ordinance No. 59.

Printed on back of bond.

An ordinance to be entitled An ordinance to provide for the issuance of water-works bonds of the city of Lampasas, and to provide for payment of the interest and sinking fund of said bonds.

SECTION 1. Be it ordained by the city council of the city of Lampasas, That the mayor of said city be, and he is hereby authorized and required to have engraved or printed coupon bonds of the city of Lampasas, with semi-annual interest coupons attached, falling due on the first days of January and July of each and every year from and after their date, at the rate of seven per cent. per annum interest; said bonds to be styled "Lampasas city water-works bonds."

SEC. 2. Said bonds shall be drawn to mature at fifty years from date of issuance, with the option reserved to the city council to redeem and retire ten thousand dollars of the principal of said bonds at the end of ten years from the date of issuance of said bonds, and to redeem and retire five thousand dollars of the principal of said bonds at the end of each period of five years from and after said ten years from date of issuance.

42 SEC. 3. Said bonds shall be issued to the amount of forty thousand dollars ($40,000) or so much thereof as may be necessary, shall be dated at the time of issuance, and shall bear interest from said date of issuance.

SEC. 4. Said bonds shall, at the time of their issuance, be dated and signed by the mayor, countersigned by the city secretary, and registered by the city treasurer.

SEC. 5. The city secretary and the city treasurer shall each keep a record of the number, date of issuance and amount of said bonds, and the number, amount and date of maturity of the coupons thereto

attached, and shall endorse the countersigning and registration thereof on each of said bonds.

SEC. 6. Said bonds shall be issued in sums of one thousand dollars each, payable to bearer, and the principal and interest thereon shall be payable at S. M. Swenson & Sons' bank, New York city, or at the office of the city treasurer, in Lampasas, the interest being payable semi-annually on the coupons attached.

SEC. 7. For the purpose of providing for the payment of the interest on said bonds, and to provide a sinking fund for the redemption of the same, a special ad valorem tax of twenty-five cents on every one hundred dollars' worth of property is hereby levied and ordered to be, assessed and collected for the year 1885, and for each and every year thereafter until said bonds, principal and interest, are paid, on all property subject to taxation within the city of Lampasas, and rendered to and assessed by the city assessor and collector; provided, however, that the city council shall, from time to time, make a proportionate reduction in the amount of the tax hereby levied, whenever the whole amount of said tax shall not be necessary, to meet the interest and sinking fund on the bonds of this issue then outstanding.

SEC. 8. To further provide funds for the payment of said interest and sinking fund there is hereby appropriated out of the revenues of the city, arising from the net earnings of the water works, 43 a sufficient sum annually, beginning with the year 1885, to make up the deficiency (if any there be) of said interest and sinking fund, after the collection of the special tax herein provided for, and the sums arising from the net earnings of the water works shall not be drawn upon or disbursed for any other purpose until said interest and sinking fund *is* fully provided for in each year, and the city treasurer shall keep a separate account of all moneys derived from said tax and net earnings of water works, to be known and designated on his books and reports as the "Water-works fund."

SEC. 9. At the end of ten years from the date of issuance of said bonds, or as soon thereafter as practicable, the city council may designate by an order entered of record on the minutes, the numbers and amount of the principal (not exceeding $10,000) and date of payment of such bonds of this issue as the city desires to redeem, said numbers being designated by lot or otherwise, as the council may then determine, provided the numbers designated are consecutive, and a copy of such order shall be published in some newspaper in the city of Lampasas, and such other notice, personally or otherwise, may be given to the holder of such designated bonds, their agents or representatives, as the council may determine at the time of such designation, and such designated bonds shall be paid upon presentation, and shall cease to bear interest from and after the date of payment fixed by said order; and at the end of each period of five years thereafter, five thousand dollars ($5,000) of the principal of said bonds may be redeemed in like manner.

SEC. 10. The bonds herein provided for shall be sold at not less than par, and in such manner as is or may be hereafter provided

by ordinance, resolution or otherwise, and the proceeds of said bonds shall be devoted exclusively to the construction of a suitable system of water works for fire protection, family supply and other public and private purposes, and for the *purpose* of such fire-department supplies as may be deemed necessary by the council, said system of water works to be operated in such manner as may
44 be hereafter provided by ordinance, resolution, or otherwise.

Filed January 6th, 1885.

S. S. POTTS, *Secretary.*

Passed January 6th, 1885.

S. S. POTTS, *Secretary.*

I approve the above ordinance January 6th, 1885.

W. J. STANDEFER,
Mayor of City of Lampasas.

Attest: S. S. POTTS, *Secretary.*

Ordinance No. 60.

Printed on back of the bond.

An ordinance to be entitled An ordinance to provide for the collection of a special tax for the payment of interest and to provide a sinking fund for the redemption of water-works bonds of the city of Lampasas.

SECTION 1. Be it ordained by the city council of the city of Lampasas, That the city assessor and collector be and he is hereby required to assess and collect a special tax of twenty-five cents on the one hundred dollars' worth of all property, subject to taxation within the city of Lampasas, rendered to and assessed by him for the year 1885, and for each and every year thereafter, for the payment of the semi-annual interest and to provide a sinking fund for the redemption of the water-works bonds of the city of Lampasas, until said bonds, principal and interest, are paid; provided, however, that the city council shall from time to time make a proportionate reduction in the amount of the tax hereby levied, whenever the whole amount of tax shall not be necessary to meet the interest and sinking fund on the bonds then outstanding.

Filed January 6th, 1885.

S. S. POTTS, *Secretary.*

45 Passed January 6th, 1885.

S. S. POTTS, *Secretary.*

I approve the above ordinance January 6th, 1885.

W. J. STANDEFER,
Mayor of City of Lampasas.

Attest: S. S. POTTS, *Secretary.*

Ordinance No. 65.

Printed on the back of the bonds.

An ordinance to be entitled An ordinance to amend section 9 of ordinance No. 59, passed and approved January 6th, 1885.

SECTION 1. Be it ordained by the city council of the city of Lampasas, That section 9 of ordinance No. 59, passed and approved January 6th, 1885, be so amended *so* as to read hereafter as follows:

SEC. 9. At the end of ten years from the date of issuance of said bonds, or as soon thereafter as practicable, the city council may designate by an order entered of record of the minutes, the numbers and amount of the principal, not exceeding $10,000.00 and date of payment of such bonds of this issue as the city desires to redeem, said numbers so designated shall be consecutive, beginning at No. 1, and a copy of such order shall be published in some newspaper in the city of Lampasas, and such other notice, personally or otherwise may be given to the holder of such designated bonds, their agents or representatives as the council may determine at the time of such designation, and such designated bonds shall be paid upon presentation, and shall cease to bear interest from and after date of payment fixed by said order; and at the end of each period of five years thereafter, five thousand ($5,000.00) of the principal of said bonds may be redeemed in like manner.

SEC. 2. That this ordinance take effect and be in force from
46 and after its passage.

Passed March 21st, 1885.

Approved March 21st, 1885.

W. J. STANDEFER, *Mayor.*

Attest: S. S. POTTS, *Secretary.*

17. Section 12 of said charter of 1873 is as follows: "Section 12. All ordinances and resolutions enacted by said corporation shall be published by posting notice at three public places in the limits of the corporation, or by publication for at least three successive weeks in a newspaper published within the limits of said city."

18. The city council that passed said ordinances above recited was composed of the mayor and five aldermen, all of whom were elected by a general vote of the entire corporation within the limits of the charter under the incorporation of 1883. Two of the said aldermen and the city secretary resided in the territory outside of the charter limits of 1873, and one of said two aldermen resided in the territory northeast of said limits and outside of the present city limits.

19. After the adoption of the ordinances as aforesaid, the said city council advertised for bids for the construction of a system of water works, and personally inspected similar water works in neighboring towns, and also tried to negotiate a sale of bonds for cash. Failing to effect a sale of bonds by the time set for receiving the

bids, the letting of the contract was postponed; at this time several bidders were ready to submit plans and bids, but as all contemplated being paid in cash, no bids were made or received. There was present at this time, prepared to submit a bid, a responsible party, willing to build a system of water works for $25,000 in cash, but it is not now known what kind of a system of water works this party intended building as to the size of the mains, pumps, standpipes, or other details, or whether he proposed to build as
47 good a system as was subsequently built, the fact being that this bidder demanded cash payment and was unwilling to take bonds in payment.

20. At a later date the said city council awarded the contract to a bidder who was willing to build a system according to his plans at the price of forty thousand dollars, to be paid in bonds of the said city, and this contractor proceeded to build the said system, and the same was fully tested by the city council before acceptance, and upon such test and approval the said works were accepted and paid for by the delivery by the city council of the bonds as called for in the contract. The city officers paid for the water works in bonds because they had been unable to sell the bonds for money. The bonds were not considered good for their face value; if they had been so considered, the water works could have been constructed for less.

21. The said system of water works as built was worth, at cash values based upon cost of construction, the sum of $26,279.00 without allowing anything by way of profits to the contractor.

22. Said bonds so issued by defendant in payment were in words and figures as follows:

STATE OF TEXAS.

Lampasas City Water-works Bond.

The City of Lampasas

will pay one thousand dollars to bearer, fifty years after date hereof, with interest from date at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July, in each year, payable at the office of S. M. Swenson & Son, in the city of New York, or at the treasurer's office in the city of Lampasas, on presentation of the proper coupon hereto attached.

Issued under authority of an ordinance entitled "An ordinance to provide for the issuance of water-works bonds of the city of Lampasas, and to provide for the payment of the interest and sinking fund of said bonds," passed January 6th, 1885; a copy of which ordinance is printed on the reverse side hereof, to which ref-
48 erence is made.

Witness the hand of the mayor of the city of Lampasas, attested by the city secretary, with the corporate seal affixed, in the

city of Lampasas, State of Texas, this twenty-seventh day of March, A. D. 1885.

W. J. STANDEFER, *Mayor.*

Attest:

[SEAL.] S. S. POTTS, *Secretary.*

In the upper left-hand corner, in transverse form, and separated from the body of the bond by vignette line, was the following:

"—— ——, comptroller, State of Texas."

"S. S. Potts, secretary, city of Lampasas."

"W. S. Morris, treasurer, city of Lampasas."

On the back of said bonds was the following endorsement:

"Registered March 28, 1885.

WM. J. SWAIN, *Comptroller.*"

But no seal was affixed to such signature or indorsement. On the back of this bond *was* printed copies of the ordinances under which it was issued, as hereinbefore set out.

23. The records of the office of the comptroller of the State of Texas show that on March 28th, 1885, there were duly registered forty bonds of the city of Lampasas, of the denomination of one thousand dollars each, as water-works bonds, and when said bonds were tendered for registration there was filed in said comptroller's office a statement, made by W. J. Standefer, mayor, and S. S. Potts, secretary, of the city of Lampasas, certifying that the assessed value of all property situated within the limits of said city of Lampasas, as shown by the tax-rolls for the year 1884, was $1,447,200.00.

24. Plaintiff is the holder and owner of the 102 coupons mentioned in his petition, each of the sum of thirty-five dollars, and maturing at the different dates set out in his petition; which
49 said coupons, except as to due date and number of bond, are of the following form:

"$35. The City of Lampasas $35.

will pay the bearer thirty-five dollars at the office of S. M. Swenson & Son, in the city of New York, or at the treasurer's office, in the city of Lampasas, on the 1st day of ——, 189–, being six months' interest on bond No. —.

S. S. POTTS, *Secretary.*"

Of which coupons, 42 in number, being numbers 9 to 15, inclusive, on bonds Nos. 8 to 13, inclusive, became due more than four years before the institution of this suit, and if plaintiff is entitled to recover in this action he is entitled to recover the sum of $2,100 principal and $452.70 interest, due on the remaining sixty coupons mentioned in his petition.

25. At the time of the affirmance of the judgment in Largen *vs.* State, 76 Texas, 323, one H. E. Hediman was in charge of the water works so acquired for said bonds, he having taken charge of said water works as superintendent before the dissolution of said organization of 1883. He held possession of said water works under a

claim for one hundred and fifty dollars' back salary due him for the dissolved organization, and for some other monies due him for a house placed on the water-works grounds. Asserting such claim, he remained in charge of such water works for over one year from the dissolution of said corporation of 1883. He delivered possession of said water works to Coler & Bro., bankers and brokers of New York city, through their agent, W. L. Vining, for the reason that Coler & Bro. paid him the debt due him for his interest in said house, said Vining at the time exhibiting to him one of said bonds of said series, and stating that said Coler & Bro. owned it and all other bonds of said series, and said Coler & Bro. and their assigns have from that time controlled and claimed to own said water works, and still control and claim to own said system of
50 water works. The bond exhibited to said Hedeman by Vining was not one of the number from which any of the coupons in suit were taken, nor did said Coler & Bro. own or represent any of the owners of the bonds from which the coupons in suit were taken. Said Hedeman did not pretend to act for the city of Lampasas in making said settlement, and only assumed to act in the protection of his own claim, and plaintiff refused to act with Coler, and has had no connection with him in any way.

26. Since the reorganization of the city government in 1890 under the special charter of 1873 and the general charter adopted immediately thereafter the city of Lampasas has exercised no control over said water works, but has paid monthly, first to said Hedeman and then to Coler & Bro., for the use of water supplied by said water-works system, and since said reorganization in 1890 said city of Lampasas has not taken possession of any other property within its limits that was acquired or constructed between 1883 and 1890, except one bridge built prior to 1890, but which was not paid for, but which on account of such non-payment was taken possession of by the builders and sold by them to the county of Lampasas and the city as organized in 1890.

27. The pumping station of the water works as originally constructed was situated within the corporate limits as defined in the charter of 1883, but was removed by the city in 1887 to a point without the corporate limits of 1883, and has remained at said place ever since. The stand pipe was located at a point near the west line of the charter limits of 1883, within such limits, and the distributing water mains leading from such stand pipe were distributed through the part of the city west of the original charter limits of 1873, thence through the business part of the city within said original limits and extending eastward and northward to the railroad depot, and said stand pipe and all of said distributing mains and fire-hydrants are within the limits of the city as now existing
51 (composed of the original charter limits and the territory added in 1890), except that for a distance of about 900 yards one of said mains extended northward to said depot with one fire-hydrant thereon.

28. There has at all times been a well-defined business center in the city of Lampasas, which is within the limits of the charter of

1873, and between 1883 and 1890 a number of business houses and residences were established in the neighborhood of the railroad depot, all of which were in the limits of the charter of 1883, but are not within the limits over which the present city government assumes jurisdiction. Within this territory there are seventy-seven inhabited dwellings and two vacant dwellings. Of the persons occupying these dwelling-houses ninety per cent. did business within the present limits of the city.

29. The majority at the election held in 1883 to determine whether the city of Lampasas should be incorporated under the general laws was 85, and at that time the population within the boundaries sought to be incorporated was four or five thousand.

30. No interest was paid on the bonds described in plaintiff's petition after 1889; but this agreement shall not be deemed a waiver of defendant's plea of limitation, nor be used to defeat such plea.

31. That between 1885 and 1889 there was a great depreciation in property values and decrease in population in the original limits of the city of Lampasas, in that part thereof added to the city in 1890, and in that part of the city organized in 1883 that is not included in either the original limits of 1873 or in that added in 1890, but such decrease and depreciation was greater in that part not in either said original limits or said territory added in 1890 than it was in other portions of the territory organized by the proceedings in 1883, the least decrease and depreciation being in the limits prescribed by the act of 1873.

32. Prior to the institution of this suit no other suit had been instituted against defendant on any part of the bonds mentioned in plaintiff's petition as having been issued by defendant or
52 on any of the coupons thereof, and none of the said coupons have been paid except those maturing prior to the year 1890, and since the year 1889 no tax has been levied by the city of Lampasas for the purpose of paying the interest on said bonds or providing a sinking fund.

33. The plaintiff in 1887 obtained the bonds the coupons of which are sued upon from the estate of his father, who had purchased them from Nelson & Noel, brokers, of Saint Louis, Missouri.

34. In 1892 the city of Lampasas decided, by vote in accordance with the statute, to take charge of the public schools, and by another vote, in accordance with the statute, decided to levy a tax to maintain such schools, and in the fall of 1893 decided to build a public school building, and in November and December, 1893, and January, February, and March, 1894, the matter was under discussion, and during those months W. B. Abney, Esq., an attorney at Lampasas, was engaged in preparing ordinances to be passed for the issuance of bonds to obtain money to build the public school building, corresponding with the attorney general and comptroller in regard to the form of such bonds and ordinances and negotiating for the sale of said bonds, and, ordinances having been enacted authorizing the issuance of said bonds which were satisfactory to the comptroller and attorney general, said bonds were issued, bearing

date of January 1st, 1894, though not in fact put in circulation until April, 1894, they having been registered by the comptroller on April 2nd, 1894, the amount of bonds so issued being $18,000, bearing six per cent. interest, all of which (except $500) are still outstanding and on which the interest has been paid regularly. At the time of the said registration by the comptroller the statement of the city officers, as required by the law, showing the assessed values of the property in said city and a statement that the city then had no bonds outstanding except about $1,500, which it had issued in payment for a bridge in 1893, was filed with said comptroller. It was not shown that the plaintiff Bell had any knowledge of the issuance of these school bonds or the issuance of any other bonds
53 by the defendant at any time before the filing of this suit.

35. In the latter part of December, 1893, the plaintiff visited Lampasas and had one or more conversations with W. B. Abney, Esq., and was negotiating with him with a view of employing him to institute a suit to collect the amount due upon his bonds, and in conversing with Mr. Abney the question of the liability of the officers who issued the bonds was discussed, also that — F. O. Brown, the contractor who received them, and that of Nelson & Noel, the Saint Louis brokers from whom his ancestor had bought them. No agreement was reached between plaintiff and Abney, and plaintiff left and did not thereafter take any steps to enforce payment upon his bonds against any one until this suit was brought.

36. With the proceeds of the sale of said bonds issued in 1894 a public school building was built, and at the time of the issuance thereof the officers of the city of Lampasas did not believe that the bonds described in plaintiff's petition were valid obligations against the city, and therefore the said statement was made to the comptroller to the effect that in January, 1894, the said city had no outstanding bonds.

WEST & COCHRAN,
Attorneys for Plaintiff.
MATTHEWS & BROWNING,
FISET & MILLER,
Attorneys for Defendant.

And the court adopts as and for its conclusions of fact the foregoing agreed statement of facts, upon which the cause was tried, and finds the following additional conclusion:

From the facts agreed upon by the parties, as above set out, the court concludes that within the city of Lampasas, as now organized and as it has existed since 1890, there is embraced substantially all of the persons and property embraced within the limits of said city as it existed under the charter adopted in 1883 by vote of the people, and which was recognized and acted upon by them
54 as a valid city government from its adoption until the *quo warranto* proceeding against Largen and his associate officers in 1889, during which time the officers assuming to act as officers under said general charter were elected in good faith by all persons

residing within the limits of the charter of 1883, and as such officers in good faith discharged the duties of their respective offices without dispute by any person residing within the restricted limits of the charter of 1873 or by persons living outside of the same.

Conclusions of Law.

1. The coupons in suit constitute a valid and existing liability against the present city of Lampasas, except that coupons Nos. 9 to 15, inclusive, being 42 in number, are barred by the statute of limitation, and the remaining 60 coupons sued upon, not being barred by the statute, are valid, and the defendant should be required to pay the same. Shapleigh *vs.* San Angelo, 167 U. S., 646; City of Lampasas *vs.* Talcott, decided by circuit court of appeals, 5th circuit, on the — day of ——, 18—.

2. Judgment is therefore rendered in favor of the plaintiff against the defendant, The City of Lampasas, for the sum of $2,552.70, with interest thereon, at the rate of six per cent. per annum, from the date hereof, and all costs of suit. To the judgment rendered and the additional conclusion of fact the defendant in open court excepts.

T. S. MAXEY, *Judge.*

Endorsed: No. 2296. James M. Bell *vs.* City of Lampasas. Findings of fact and conclusions of law. Filed July 12th, 1899. D. H. Hart, clerk.

Stipulation Waiving a Jury.

Filed July 11th, A. D. 1899.

U. S. Circuit Court, Western Dist. of Tex., at Austin, July Term, 1899.

JAMES M. BELL
vs.
CITY OF LAMPASAS. } No. 2296.

55 It is hereby agreed by and between the parties, plaintiff and defendant, that a jury be, and is hereby, waived, and that all matters of fact as well as of law be submitted to the court.

WEST & COCHRAN,
Att'ys for Plaintiff.
MATTHEWS & BROWNING AND FISET & MILLER,
Att'ys for Defendant.

Endorsed: No. 2296. James M. Bell *vs.* City of Lampasas. Stipulation waiving a jury. Filed July 11th, A. D. 1899. D. H. Hart, clerk.

Judgment.

Entered July 12th, 1899.

In the Circuit Court of the United States for the Western District of Texas, Austin Division.

JAMES M. BELL
vs.
THE CITY OF LAMPASAS. } No. 2296.

WEDNESDAY, *July 12th*, 1899.

And now, on this day, this cause being duly reached on the docket and called for trial, come the parties, plaintiff and defendant, by attorneys, and upon request are granted leave respectively to file amended and supplemental pleadings; and thereupon comes on to be considered the demurrers and exceptions of defendant, and, the same being heard and understood, it is ordered that each and all of said demurrers and exceptions be overruled except special exception No. one (1), interposing the bar of the statute of limitation to plaintiff's coupons numbers nine (9) to fifteen (15), inclusive, which is sustained; and to the order overruling its said demurrers and exceptions the defendant duly excepted and asked that
56 its exceptions be noted in the record, which is accordingly done. The parties thereupon announced ready for trial on the merits, and by written stipulation waive a jury and submit the matters in controversy to the court upon an agreed statement of facts, which is made a part of the findings of fact by the court herein; and the court, having heard the pleadings and the evidence as contained in said agreed statement, and argument of counsel, by request of parties files its findings and conclusions of fact and law, and thereon renders judgment for plaintiff against defendant for $2,552.70, being the amount of principal and interest due upon the sixty coupons sued upon which are not barred by the statute of limitation.

It is therefore considered and adjudged by the court that the plaintiff, James M. Bell, do recover against the defendant, The City of Lampasas, the said sum of two thousand five hundred and fifty-two and $\frac{70}{100}$ dollars, together with all costs in this behalf expended, for which let execution issue in terms of the law, and this judgment shall bear interest from its date at the rate of six per centum per annum.

To said findings and conclusions of fact and law when announced and to the judgment of the court thereon as rendered the said defendant duly excepted and asked that its exceptions be noted in the record, which is accordingly done.

Bill of Exceptions of the Defendant.

Filed July 12, 1899.

In the Circuit Court of the United States, Western District of Texas, at Austin, July Term, A. D. 1899.

JAMES M. BELL
vs.
THE CITY OF LAMPASAS. } No. 2296.

Be it remembered that on the trial of the above entitled and numbered cause the court having filed its conclusions of fact
57 and law, made a part of the record in this cause, and announced that judgment would be rendered in favor of plaintiff, as prayed for in plaintiff's petition, and to which conclusions of law and judgment the defendant in open court then and there excepted generally and specially, because the said conclusions of law and judgment were not warranted by the conclusions of fact as found by the court, in this, that:

1st. The organization of 1883, under which the bonds sued on were issued, was not voidable, but wholly void; had neither a *de jure* or *de facto* existence, and the bonds could have no validity for any purpose.

2nd. If the organization of 1883 be granted to be voidable only, then the bonds were void, because the ordinances under which they were issued did not provide for the sale and delivery of the bonds, and the conclusions of fact do not show that any one was authorized to sell and deliver the bonds.

3rd. The bonds were not registered by the city treasurer, as required by the ordinance under which they were issued, nor was the certificate of the comptroller of the State of Texas or of the city treasurer of the city of Lampasas indorsed on the bonds, as was necessary to give them any validity.

4th. It appears that the bonds were not sold and the proceeds used in payment for the system of water works, as provided by said ordinance, but that the bonds were traded at less than par for the water works, which was contrary to the provisions of the said ordinance, and, further, that this trade was made in order to evade the provisions of the ordinance, and the failure to have said certificates of the comptroller of the State and the city treasurer endorsed on said bonds charged the holders thereof with notice that said bonds had been illegally issued and traded for said water works in order to evade the provisions of said ordinance, even if it did not absolutely invalidate the bonds.

5th. If the organization of 1883 was a *de facto* organization, so that the bonds issued by it would be legal obligations against
58 that corporation and the inhabitants thereof, the conclusions of fact show that the present city of Lampasas—that is, the defendant in this case—was not when the organization of 1883 was

dissolved, in 1889, and is not now the same corporation as the city of Lampasas organized in 1883; did not and does not embrace the same inhabitants or territory substantially, and is not therefore liable for the debts of the corporation of 1883; and, further, the conclusions of fact show that the present city has not acquired any of the property that belonged to said city of Lampasas as organized in 1883.

6th. The City of Lampasas, defendant in this suit, was incorporated in 1873 and has existed as a municipal corporation continuously up to this time and has been a separate and distinct municipal corporation from the city of Lampasas as attempted to be organized in 1883, and if the bonds are in any respect valid obligations as against the municipal corporation called the city of Lampasas, organized in 1883, they are not obligations against this defendant.

7th. The conclusions of fact show that the officers who issued the said bonds were not either *de jure* or *de facto* officers of defendant.

8th. The conclusions of fact show that, even if it be held that the bonds were issued by defendant acting under its charter of 1873, they are invalid, because they were issued before the ordinances authorizing their issuance had taken effect, as defendant's charter required publication of all ordinances for three weeks, and the bonds were issued within six days of the time of the enactment of the last ordinance.

9th. The conclusions of fact show that, even if it be held that the bonds were issued by defendant while acting under its charter of 1873, they are invalid, because the assessed value of all property within the boundaries prescribed by said charter at the time of the issuance of the bonds was such that a levy therein of a tax of 25 cents on each one hundred dollars in value thereof would not raise enough money to pay the interest on an issue of $40,000 of
59 bonds at the rate of 7 per cent. per annum and created a sinking fund of two per cent.

10th. If said ordinances passed under the circumstances which the findings of the court show them to have been passed are enforced as now sought to be enforced and said bonds are held to be binding obligations of this defendant, then the necessary result thereof will be that the tax-payers residing within or owning property within defendant's boundaries as fixed by the special charter of 1873 will de de-rived of their property without due process of law and in violation of sec. 1 of the fourteenth amendment to the Constitution of the United States.

11th. The said conclusions of fact show that the pretended organization of 1883 was formed under the provisions of chapters 1 and 11 of the Revised Statutes of 1879 and amendments thereto, by which Revised Statutes the right of taxation was conferred on municipal corporations, said chapters 1 and 11 of the Revised Statutes of the State of Texas and said acts amendatory thereof being in violation of sec. 1 of the fourteenth amendment of the Constitution of the United States, in that they provide for the formation of municipal corporations, with power to levy taxes on property therein,

with boundaries not fixed by the legislature or by any body or tribunal before whom the residents of the territory proposed to be incorporated could be heard.

12th. The conclusions of fact show that after the decision of the case of Largen *vs.* The State, in January, 1890, no holder of any of said bonds has ever asserted any right to recover of defendant on said bonds until the institution of this suit, but such holders have acquiesced in the principles of law decided in said cause, knowing that defendant and its inhabitants treated said decision as establishing the invalidity of said bonds, and therefore had not, in 1890 or since, taken possession of said water works, and the plaintiff, during all that time, by acts and words, induced the defendant to believe he had abandoned any rights he might have as a holder of said bonds, whereby defendant was induced to materially
60 change its condition by issuing other bonds and contracting other debts in making other public improvements; which bonds and debts would not be valid if said bonds sued on were valid obligations of defendant, and the holders thereof would be materially injured in their rights, acquired under the belief that plaintiff had so abandoned the rights claimed by him under the bonds sued on.

And the court thereupon overruled all of said exceptions and rendered judgment, as prayed for by the plaintiff, in the terms as shown in the judgment forming a part of the record of this cause; to which rulings, conclusions of law, and judgment of the court the defendant then and there in open court excepted, and now the defendant tenders this its bill of exceptions in open court during the time required by law to the judge of the court for his allowance and signature, and the said bill is now here in open court allowed, signed, and ordered to be filed and constitute a part of the record in this cause.

This the 12th day of July, A. D. 1899.

T. S. MAXEY, *Judge.*

Endorsed: No. 2296. James M. Bell *vs.* The City of Lampasas. Bill of exceptions of the defendant. Filed July 12, 1899. D. H. Hart, clerk.

Assignment of Errors.

Filed July 14, 1899.

In Circuit Court of the United States, Western District of Texas, at Austin, July Term, 1899.

JAMES M. BELL *vs.* CITY OF LAMPASAS. } No. 2296.

Now comes The City of Lampasas, the defendant in the above-entitled and numbered cause, by its attorneys, and assigns the following errors:

61 1st. The court erred in overruling the defendant's general demurrer and its 8th special exception to plaintiff's amended

petition. This was erroneous because the only legitimate inference to be drawn from said petition is that it seeks to recover from defendant as a municipal corporation attempted to be formed under the general laws of the State of Texas, with power to levy and collect taxes, no special statute being pleaded, which general laws relative to the formation of municipal corporations and the levy and collection of taxes thereby are in conflict with section 1 of the 14th amendment to the Constitution of the United States, in that the boundaries of such corporations are not fixed by the legislature, nor does the law make any provision by which said boundaries can be fixed by any tribunal before which the residents of the territory proposed to be incorporated could be heard as to whether they should be included in or made subject to taxation in the corporation.

2nd. The court erred in overruling the defendant's second exception to plaintiff's 1st supplemental petition. This ruling was erroneous because the adoption by the defendant of the Revised Statutes in March, 1890, in lieu of its special charter and the annexing of additional territory, as pleaded by plaintiff in his said 1st supplemental petition, did not have any effect on said special charter, deprive defendant thereof, or add any territory to the boundaries fixed in said special charter for the following reasons, viz:

I. Articles 340, 506 to 513, and 503, embraced in title XVII of the Revised Statutes of 1879 of the State of Texas, under which said adoption of the Revised Statutes was made and additional territory added, are in violation of sec. 1 of the 14th amendment to the Constitution of the United States for the same reasons as stated in the preceding assignment of error.

II. Said articles of the Revised Statutes are in conflict with section 56, article 3, of the constitution of the State of Texas in that
62 they are part of an act of the legislature, which is a special act, though in the form of a general law, authorize a city council to repeal a special act of the legislature incorporating a city, leave a city council to determine whether it shall be governed by the special act creating the city or the general laws of the State, and are attempts to regulate the affairs of cities.

3rd. The court erred in overruling the defendant's third exception to plaintiff's first supplemental petition wherein the plaintiff pleaded the validating acts of the legislature, passed after the year 1890, as curing irregularities in the charter of 1883. Said ruling was erroneous for the following reasons, viz:

I. Said validating acts were not intended to, did not purport to, and did not validate such proceedings as those pleaded by plaintiff and defendant as having been done and had in 1883, whereby a city was attempted to be incorporated so as to embrace within its boundaries, with other territory, an existing city.

II. Said validating acts attempt to validate acts done or attempted to be done under said articles of the Revised Statutes relating to municipal corporations, which were in violation of section 1 of the

14th amendment to the Constitution of the United States for the reasons as stated in the 1st assignment of error herein.

III. Said validating acts were in effect special acts, and therefore void.

4th. The court erred in its last conclusion of fact, its conclusions of law, and the judgment rendered thereon because the organization formed in 1883, under and by virtue of which the bonds, the coupons of which are sued on, were issued, was not only voidable but wholly void for the reason that such organization was attempted to be formed under the general laws of the State of Texas, with power to levy and collect taxes, which general laws of the State of Texas then in force and embraced in title XVII of the Revised Statutes of 1879, relating to the formation of municipal corporations and the levy and collection of taxes thereoy, were in violation
63 of the section 1 of the 14th amendment to the Constitution of the United States, in that the boundaries of such corporations were not fixed or to be fixed by the legislature, nor do said statutes make any provision by which said boundaries can be fixed by any tribunal or official before whom the residents of the territory proposed to be incorporated could be heard as to whether they should be included in or made subject to taxation in the proposed corporation.

5th. The court erred in its conclusions of law and the judgment rendered thereon because the general laws of the State of Texas under which said organization of 1883 was attempted to be formed are in conflict with the section 56, article 3, of the constitution of the State of Texas, in that, though in the form of a general law, they constitute in effect a special act, authorize a city council to repeal a special act of the legislature incorporating a city, leave the city councils of a certain class of cities to determine whether they will be governed by a special act creating the city or by the general laws of the State, and are attempts to regulate the affairs of a certain class of cities.

6th. The court erred in its last conclusion of fact, its conclusions of law, and the judgment rendered thereon because the defendant was incorporated as a city by a special act of the legislature in 1873, which fixed its boundaries, and it has continued ever since as a municipality without any change in its charter until 1890, and that the attempted organization of a municipal corporation in 1883 under the general laws of the State (even conceding said law to be constitutional) including nearly three times as much territory as was included within the boundaries described in said special act, not by the inhabitants of defendant, but by a majority of the inhabitants of such larger territory, a majority of such inhabitants residing outside of defendant's limits, was without authority of law, null, and void, and did not destroy or effect the corporate existence of defendant.

7th. The court erred in its last conclusion of fact, its conclusions of law, and the judgment thereon because if the organiza-
64 tion of 1883 was a *de facto* corporation, so that the bonds issued by it would be obligations against that corporation or

the inhabitants thereof, the conclusions of fact show that defendant was not, when said bonds were issued or when the organization of 1883 was dissolved or abandoned in 1889, and is not now, the same corporation as that attempted to be formed in 1883 under defendant's name, did not and does not embrace the same inhabitants, territory, or property substantially, is not the successor thereof, and has not at any time received or acquired any property that may have belonged to said organization of 1883, so that if said bonds are in any respect valid obligations as against the municipality called the city of Lampasas, organized in 1883, they are not obligations on which defendant is liable.

8th. The court erred in its conclusions of law and the judgment rendered thereon because there cannot be a *de facto* corporation, including within its boundaries the greater part of the inhabitants and territory of an existing legal municipal corporation, a large amount of other territory, and a large number of other inhabitants, with power to bind by its contracts or acts such existing legal municipality.

9th. The court erred in its conclusions of law and its judgment rendered thereon because the persons who, as officers of said organization of 1883, issued said bonds and passed the ordinances authorizing the issuance of same were not the officers of defendant, were not the same officers as were by defendant's charter authorized to pass ordinances and issue bonds, were not when they passed said ordinances and issued said bonds assuming or pretending to act as the officers of this defendant, and were therefore not *de facto* officers of defendant.

10th. The court erred in its conclusions of law and the judgment rendered thereon because when the illegal organization of 1883 was abandoned in 1889, having within its boundaries 438 tax-paying voters and an area of 1,495 acres, its liabilities did not become the liabilities of defendant, which then had only 175 tax-paying
65 voters and an area of 553 acres, and not then being liable, the defendant did not become bound for said liabilities in December, 1890, when it attached 428 acres out of the 942 acres of the territory of the organization of 1883, not included within defendant's boundaries.

11th. The court erred in its last conclusion of fact, its conclusions of law, and the judgment rendered thereon because at the time of the issuance of said bonds the only legal existing city was the defendant, with the boundaries fixed by its charter of 1873, and at that time the property within such boundaries did not exceed in value the sum of one million dollars, and the levy and collection of a tax of 25 cents on each one hundred dollars in value of the property within said boundaries would not then or at any time since produce enough revenue to pay the interest on the bonds mentioned in plaintiff's petition and create a sinking fund of at least two per cent., and such issuance of bonds was therefore illegal, as being in violation of section 9 or article 9 and section 7 of article 11 of the constitution of the State of Texas, and no subsequent change in de-

fendant's boundaries or increase in its territory or taxable property would render such bonds valid.

12th. The court erred in its conclusions of law and the judgment rendered thereon because the city treasurer did not endorse on said bonds his registration thereof, as required by the ordinances by virtue of which they were issued, and which ordinances were printed on the backs of the bonds, nor did the comptroller of the State of Texas endorse thereon his certificate of registration thereof, authenticated with his official seal, as required by the statutes of the State of Texas. These certificates were necessary in order to give the bonds validity, or, if not necessary in order to give them validity, the want of such certificates of registration destroyed the negotiability of the bonds and charged the purchasers thereof with notice of the facts found by the court that the bonds were not
66 sold at par and the proceeds used in the construction of a system of water works, as required by said ordinances, but, upon the contrary, the whole issue of $40,000 of bonds was traded for a system of water works worth much less than that sum, and that this was done to evade the provisions of said ordinances, and because said bonds were issued before one of the ordinances authorizing their issuance and printed on the back thereof had taken effect.

13th. The court erred in its last conclusion of fact, its conclusions of law, and the judgment rendered thereon because there was no such acquiescence on the part of defendant or its inhabitants as would estop it or them from disputing the validity of the bonds issued without authority of law by the organization of 1883.

14th. The court erred in that part of its last or additional conclusion of fact wherein it finds that there is embraced in the city of Lampasas as it has existed since 1890 substantially all the persons and property embraced within the limits of said city as it existed under the charter adopted in 1883 by vote of the people, such finding being immaterial for the following reasons, viz:

I. The organization of 1883 and all its acts were void, and as it could create no debts binding on itself, the defendant, a pre-existing incorporation, would not, by adding the greater part of its territory, become liable for debts it had not itself created.

II. The debt attempted to be created, being greater than was authorized by defendant's assessed values at the time of the issuance of the bonds or at any time since, could not become binding by reason of any subsequent acts of defendant.

III. The bonds not having been issued or registered as required by the ordinances under which they were issued or the statutes of the State, and not having been sold at "not less than par" as required by said ordinances, but having been traded at less than their par value for the purpose of evading the provisions of the ordinances, they would be invalid, even if defendant's territory and inhabitants had been identical with that of the organization of 1883 and defendant has been the successor thereof.

67 15th. The court erred in its said last or additional conclusion in that it is not warranted by, but is in conflict with, the other conclusions of fact on which it was based, which other con-

clusions show that there has been at no time embraced within defendant's territory substantially all the persons and property that was embraced within the limits of the organization of 1883.

16th. The court erred in its conclusions of law and the judgment rendered thereon because the facts agreed on at the trial and which were adopted as conclusions by the court show that plaintiff, by his acts, conduct, and acquiescence from 1889 to the time of the institution of this suit, was estopped from claiming that the bonds sued on were valid obligations of defendant.

FISET & MILLER AND
MATTHEWS & BROWNING,
Attorneys for Defendant.

Endorsed: No. 2296. James M. Bell *vs.* City of Lampasas. Assignment of errors. Filed this 14 day of July, 1899. D. H. Hart, clerk, by J. W. Hancock, deputy.

Petition for Writ of Error.

Filed July 14, 1899.

United States of America to the honorable the justices of the Supreme Court of the United States:

Now comes the City of Lampasas, a municipal corporation in the county of Lampasas, State of Texas, by its attorneys of record, Fiset & Miller and Matthews and Browning, and respectfully represents to your honors that in cause No. 2296, wherein said City of Lampasas was defendant and James M. Bell was plaintiff (Messrs. West & Cochran, of Austin, Travis county, Texas, being attorneys of record for plaintiff), pending in the United States circuit court, fifth circuit and western district of Texas, at Austin, wherein was involved
68 the construction and application of the Constitution of the United States, and wherein a law of the State of Texas was claimed to be in contravention of the Constitution of the United States, and the decision was against the title, right, privilege, and exemption specially set up and claimed under such Constitution, and the decision was also in favor of the validity of said law of said State, and judgment was rendered at the July term of said court, in 1899, against defendant and in favor of said James M. Bell for the sum of two thousand five hundred and fifty-two and $\frac{70}{100}$ ($2,552.70) dollars on or about July 12, 1899, together with interest from said date and costs, and that in the record, proceedings, and rendition of the judgment in said cause manifest error hath intervened, to the great damage of it, the said City of Lampasas.

Wherefore it prays for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court of the United States.

FISET & MILLER AND
MATTHEWS & BROWNING,
Attorneys for City of Lampasas.

Granted the 14th day of July, A. D. 1899.

T. S. MAXEY, *Judge.*

Endorsed: 2296. James M. Bell *vs.* City of Lampasas. Petition for writ of error. Filed this 14 day of July, 1899. D. H. Hart, clerk, by J. W. Hancock, deputy.

Writ of Error Bond.

Approved and filed July 14th, 1899.

In the Circuit Court of the United States, Western District of Texas, at Austin, Texas, Fifth Circuit, July Term, 1899.

JAMES M. BELL
vs.
THE CITY OF LAMPASAS. } No. 2296.

69 Whereas in the above styled and numbered cause, pending in the United States circuit court, fifth circuit, and western district of Texas, at Austin, Texas, and at a regular term of said court, to wit, on the 12th day of July, 1899, the said James M. Bell, plaintiff in said cause, recovered judgment against The City of Lampasas, the defendant therein, for the sum of twenty-five hundred and fifty-two and $\frac{70}{100}$ dollars, with interest thereon from said date, at the rate of six per cent. per annum, and all costs of suit, and from which said judgment the said City of Lampasas has sued out a writ of error to the Supreme Court of the United States:

Now, therefore, we, The City of Lampasas, as principal, and J. W. Townsen, C. D. Stokes, W. T. Campbell, and J. F. White, as sureties, acknowledge ourselves bound to pay to said James M. Bell the sum of two hundred and fifty dollars ($250.00), conditioned that the said City of Lampasas shall prosecute its writ of error to effect and shall answer all costs if it fails to make its plea good.

Witness our hands and seals this 12th day of July, 1899.

THE CITY OF LAMPASAS,
By MATTHEWS & BROWNING, *Its Attorneys.*
J. W. TOWNSEN. [SEAL.]
C. D. STOKES. [SEAL.]
W. T. CAMPBELL. [SEAL.]
J. T. WHITE. [SEAL.]

Approved July 14, 1899.
T. S. MAXEY, *Judge.*

Certificate of Solvency of Bond.

THE STATE OF TEXAS, }
County of Lampasas. }

I, J. E. Morgan, clerk of the county court in and for said county, do hereby certify that J. W. Townsen, C. D. Stokes, W. T. Campbell, and J. F. White, whose names appear signed to the annexed bond, are, in my opinion, good and ample security for the
70 amount therein specified; that they each have property in said county subject to execution of a larger amount, and that

if said bond was offered to me for approval the same would be accepted and approved.

To certify which I hereunto set my hand and impress of my official seal, at office, in the city of Lampasas, on the 12th day of July, 1899.

J. E. MORGAN,
Clerk County Court, Lampasas County,
By D. J. MORRIS, *Deputy.*

[SEAL.]

[Revenue stamp.]

Endorsed: No. 2296. James M. Bell *vs.* The City of Lampasas. Error bond. Filed this 14 day of July, 1899. D. H. Hart, clerk, by J. W. Hancock, deputy.

71 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the western district of Texas, holding sessions at Austin, in said district, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between James M. Bell, who is plaintiff, and The City of Lampasas, as defendant, No. 2296 on the docket of said circuit court of the United States, western district of Texas, sitting at Austin, in said district, a manifest error hath happened, to the great damage of the said City of Lampasas, which is plaintiff in error herein, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., within thirty days from the date hereof, in the said Supreme Court of the United States to be then and there held, and, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 14th day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

[The Seal of the U. S. Circuit Court, Western Dist. Texas, Austin.]

D. H. HART,
Clerk of the Circuit Court of the United States for the Western District of Texas, at Austin.

Allowed this the 14th day of July, A. D. 1899.
T. S. MAXEY,
United States Judge.

72 [Endorsed:] No. 2296. James M. Bell *vs.* City of Lampasas. Writ of error. Filed July 14th, 1899. D. H. Hart, clerk.

73 THE UNITED STATES OF AMERICA, }
Fifth Judicial Circuit. }

The President of the United States to James M. Bell or his attorneys of record, Messrs. West & Cochran, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error sued out and filed in the clerk's office of the circuit court of the United States for the western district of Texas, sitting at Austin, in the cause wherein The City of Lampasas is plaintiff in error and you, the said James M. Bell, are defendant in error, to show cause, if any there be, why the judgment rendered against the said City of Lampasas, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 14th day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

Signed this the 14th day of July, A. D. 1899.

[The Seal of the U. S. Circuit Court, Western Dist. Texas, Austin.]

T. S. MAXEY,
United States Judge.

Attest: D. H. HART, *Clerk.*

We hereby waive being served with a copy of the foregoing citation and accept service thereof this 14th day of July, 1899.

WEST & COCHRAN,
Attorneys of Record for Defendant in Error, James M. Bell.

74 [Endorsed:] No. 2296. James M. Bell *vs.* City of Lampasas. Citation. Marshal's return. Filed this 14 day of July, 1899. D. H. Hart, clerk, by J. W. Hancock, deputy.

75 *Certificate of Clerk.*

Dated July 19, 1899.

THE UNITED STATES OF AMERICA, }
Western District of Texas. }

I, D. H. Hart, clerk of the circuit court of the United States in and for the western district of Texas, hereby certify that the foregoing, on seventy-two pages, besides this, is a true and correct copy of all papers filed and proceedings had in cause No. 2296, styled James M. Bell *vs.* The City of Lampasas, as the same appear on file

and of record in this office, and, further, that the original writ of error and citation in error in said cause are embodied in said transcript.

In testimony whereof witness my official signature and seal, at office, in Austin, Texas, this 19th day of July, 1899.

[The Seal of the U. S. Circuit Court, Western Dist. Texas, Austin.]

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.,
By J. W. HANCOCK, *Deputy.*

[Endorsed:] Transcript in the case of The City of Lampasas, plaintiff in error, *vs.* James M. Bell, defendant in error.

Endorsed on cover: File No., 17,485. W. Texas C. C. U. S. Term No., 115. The City of Lampasas, plaintiff in error, *vs.* James M. Bell. Filed August 10th, 1899.

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